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JED DEAN CHRISTENSEN NOMINATION

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HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF JED DEAN CHRISTENSEN TO BE DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

MARCH 7, 1986

ORIGINAL

Printed for the use of the
Committee on Energy and Natural Resources

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JED DEAN CHRISTENSEN NOMINATION

FRIDAY, MARCH 7, 1986

U.S. SENATE,
COMMITTEE ON ENERGY AND
NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:02 a.m., in room SD-366, Dirksen Senate Office Building, Hon. James A. McClure, chairman, presiding.

Present: Senators McClure, Warner, Hecht, Ford, and Rockefeller.

Also present: James P. Beirne, senior counsel; Robert L. Terrell, professional staff member; D. Michael Harvey, chief counsel for the minority; and Patricia J. Beneke, counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. The hearing will come to order. This hearing has been scheduled to receive testimony concerning the nomination of Jed D. Christensen to be Director of the Office of Surface Mining in the Department of the Interior. Mr. Christensen has served since April 1985 as Acting Director of the Office and previously served in the Department as Deputy Assistant Secretary for Water and Science.

The job of Director of the Office of Surface Mining is perhaps one of the most difficult in the Department. The Office was created under the 1977 Surface Mining Control and Reclamation Act to administer one of the most complex statutes ever created by the Congress. With the budget constraints, that law becomes even more difficult to administer.

This is one of those jobs in which you are subject to criticism, whatever you do. That situation was amply demonstrated just last weekend when "60 Minutes" decided to review the operation of the Office. I certainly expected, and I think I was joined by most others in expecting, that the show would attack the performance of the Office in not being more aggressive in its enforcement.

The show, however, focused on what it perceived as inflexibility in enforcement by the Office in requiring reclamation to original contours.

I certainly do not envy Mr. Christensen the task which faces him, but I do congratulate him on his willingness to tackle the job.

The Committee has received an endorsement for Mr. Christensen from the Interstate Mining Compact, and that letter will appear in the hearing record at this point.

[The letter referred to follows:]

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Interstate Mining Compact

1384 Devonport Drive
Lexington, Kentucky 40504
Kenes C. Bowling, Executive Director
Phone: 606/253-1376

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Virginia

February 13, 1986

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The Honorable James A. McClure
Senate Dirksen Office Building
Washington, DC 20510

Dear Senator McClure:

In the near future Mr. Jed Christensen will come before the Senate Committee on Energy and Natural Resources for confirmation as Director of the Office of Surface Mining (OSM).

Since Richard Harris left the directorship in March 1984, OSM has had a succession of acting directors; a total of five. In the absence of a permanent director, OSM has been unable to develop a program that gives the states a clear and evenhanded direction.

For the past few months, Jed Christensen has been Acting Director and in that capacity has demonstrated an extraordinary understanding of the problems within the Agency. Jed is dedicated to the task of developing a federal program that will vigorously follow the Congressional mandate in Public Law 95-87, of a sound and effective state enforcement program and an evenhanded federal oversight policy.

The Interstate Mining Compact Commission (IMCC) is composed of the governors of 17 states, 15 of which mine approximately eighty-five percent of this nation's coal and within their borders have over ninety-five percent of the abandoned mine lands. The IMCC unanimously requests an early confirmation of Jed Christensen as Director of OSM. Such a move will help stabilize the state/federal reclamation program, and will allow the states to continue their work in an orderly manner.

Sincerely,

Kenes C. Bowling
Executive Director

/mkr

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The CHAIRMAN. Mr. Christensen, it is a pleasure to welcome you before this Committee.

Before proceeding to your testimony, the rules of the Committee which apply to all nominees that require confirmation require that they be sworn in connection with their testimony.

Will you please rise and raise your right hand?

[Whereupon, Jed D. Christensen was duly sworn by the chairman.]

The CHAIRMAN. Would you please be seated?

We also ask four questions of all witnesses appearing before us for confirmation. I would like to ask these questions of you.

Will you be available to appear before this Committee and other congressional Committees to represent departmental positions and respond to issues of concern to the Congress?

Mr. CHRISTENSEN. Yes, I will, Mr. Chairman.

The CHAIRMAN. Your informational statement has been submitted to the Committee. However, it is required that this statement be made public unless the Committee decides that special circumstances justify an exception.

Do you have any objection to the publication of your informational statement?

Mr. CHRISTENSEN. No, I do not.

The CHAIRMAN. Are you aware of any personal holdings, investments, or interests that could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed and assume the office to which you have been nominated by the President?

Mr. CHRISTENSEN. No, Mr. Chairman.

The CHAIRMAN. Are you involved in or do you have any assets held in blind trust?

Mr. CHRISTENSEN. No, sir.

The CHAIRMAN. Mr. Christensen, before moving to your statement, it is my understanding that your wife is with you here today.

Mr. CHRISTENSEN. Yes, she is. Lynda Christensen.

The CHAIRMAN. We are delighted to have you here with us, and I know that you are more than interested in what is happening to your husband here today. I wish you both well.

Senator Hecht, may I yield to you at this point?

STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator HECHT. Thank you, Mr. Chairman.

Jed, there is an old axiom in Washington: When you come up for nomination, if the room is empty that is a good sign because it is only when the room is full you have a lot of problems.

It is my pleasure today to support Jed Christensen as President Reagan's nominee for Director of the Office of Surface Mining. It is clear that this is a position which must be filled by someone with the management ability to put the Agency on course and keep it there.

Jed has had a good deal of experience working in the management of some of the Nation's fastest growing metropolitan areas, including my home in Clark County, NV.

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By the very nature of their rapid growth, these cities and counties are faced with immense problems in providing basic services, handling what appears to be a large growth in paperwork and dealing with a variety of diverse interests.

At the same time, the nature of Federal interaction with the State dictates that the county and local management work closely with the States in settling financial plans and reaching program goals. Jed has already proved himself on that front.

Because a key to the success of the Surface Mining law is reasoned and capable interaction with the different coal producing States, Jed is an ideal candidate for this post. I might add that he has also proved himself as a manager at the Federal level well before he was chosen to serve as the Director of the Office of Surface Mining.

I was able to work with Jed in his position as Special Assistant to the Commissioner of Reclamation and Deputy Assistant Secretary for Water and Science in the Department of the Interior. I know that he has been a tireless student of the management and organizational structure of the Department.

Through his mastery of this area, he has been able to direct effective and efficient changes in the personnel and management of several bureaus, most notably the Bureau of Reclamation.

Jed has been serving as Acting Director of the Office of Surface Mining for nearly 1 year now. He has not shied away from the tough issues. During that time he has been actively involved in every aspect of the Agency's organization and operations. He has visited nearly all of its field locations and learned of local concerns.

I have been informed that the Interstate Mining Compact Commission and Western Interstate Energy Board, representing coal State regulatory agencies, are supportive of Jed's nomination.

This is due in part to his willingness to visit the coal producing States and build stronger working relationships. In addition, he has been a tireless worker in the Department of the Interior's efforts to develop a strategy to deal with the long-term management issues that confront the Agency.

His short tenure as Acting Director of the Office of Surface Mining has been productive. It is certainly time to provide the stability which the Agency needs to do its job. Jed is a person who can provide the necessary continuity.

I am certain my colleagues on the Committee will agree with me when I say if there ever was an agency that needed an effective manager, it is the Office of Surface Mining. Jed Christensen is highly qualified in this area. He has, in fact, already shown his executive ability in the Office of Surface Mining. I encourage the Committee to act favorably on his nomination.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Hecht.

Senator FORD. Thank you, Mr. Chairman. I have a statement from Senator Johnston that I would like to ask unanimous consent that it be included in the record.

The CHAIRMAN. Without objection, so ordered.

[The prepared statement of Senator Johnston follows:]

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Statement by Senator J. Bennett Johnston

For one to say that the Office of Surface Mining Reclamation and Enforcement ("OSMRE") has encountered severe difficulties in implementing the Surface Mining Control and Reclamation Act and that the agency has a dismal record is clearly an understatement. To date, OSMRE has suffered repeated failures in its efforts to carry out its mission. This record is regrettable for all concerned -- for industry, for environmentalists, and for the American public.

I believe a root cause of OSMRE's problems has been its lack of consistent and effective leadership. It is my sincere hope that under the leadership of Jed Christensen, the agency will be able to get on with its important work. The Surface Mining Control and Reclamation Act ("SMCRA") was enacted for a purpose -- to ensure that the surface mining of coal is conducted so as to protect the environment, to ensure that surface mining sites are satisfactorily reclaimed, and to ensure that surface mining is not undertaken where reclamation cannot be accomplished. The American people deserve for the statute's congressionally-recognized objectives to be fulfilled. I wish Mr. Christensen well in this pursuit.

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STATEMENT OF HON. WENDELL H. FORD, A U.S. SENATOR FROM THE STATE OF KENTUCKY

Senator FORD. Mr. Chairman, I have a statement also. For the sake of time, I ask that it be included in the record, too.

The CHAIRMAN. Without objection, so ordered.

Senator FORD. I have one little statement in there. I plan to support this nomination unless the nominee becomes a cropper in this hearing, and I do not think he is going to do that.

I would like to ask unanimous consent that the letter from our Secretary of Natural Resources and Environmental Protection in Kentucky, endorsing the nominee, be included in the record at this time also.

The CHAIRMAN. So ordered.

Senator FORD. I thank the chairman.

[The prepared statement of Senator Ford and letter follow:]

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Statement of Senator Wendell H. Ford

Nomination: Jed Christensen, Director OSM

March 7, 1986

Mr. Chairman:

I am pleased that finally we have this nomination before us. Administration of the Office of Surface Mining has been criticized from all sides. Much of this criticism is justified both as relates to the present and to the previous Administration. Again today we will hear adverse testimony and questioning. That is the way of life in the surface mining program.

If anything characterizes the administration of the program, it is its lack of stability. At times, this has bordered on downright chaos. Courts have done much more management of the program than have the Directors and Interior Secretaries. This needs to be put at an end by effective executive administration.

First of all, the Director's position needs to be filled before we can continue recently encouraging steps toward stability in the program.

Mr. Chairman, today we are going to hear some discouraging charges about administration of the program.

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However, there are encouraging signs. In that context I would like to read into the record excerpts from a January 27 letter of W. Hord Tipton, Director, Lexington Field Office, U.S. Office of Surface Mining:

> Attached for your information is a copy of the semi-annual report on the Kentucky permanent program for the first half of the 1986 oversight period. This "interim" report was recently presented to Secretary Baldwin to assist in improving the enforcement program before preparing the annual report to Congress (June 1986). You will note that most of the problems previously identified in Kentucky continued during the first half of the year. I am planning to present Kentucky data as covering two periods in the final annual oversight report. This will provide an opportunity to illustrate anticipated improvements the second part of the year.
>
> I would like you to be aware of positive trends observed currently in Kentucky's surface mining regulatory program. The current working relationship between State and Federal officials in Kentucky has certainly improved enabling mutual agreement on several common goals and objectives. OSMRE is cautiously optimistic that current trends will be sustained and institutionalized in the Commonwealth. I look forward to being in a position to applaud Kentucky's progress in establishing a credible enforcement program come OSMRE's next annual report. Kentucky will, however, need a lot of support in the next few months to assure the train stays on track.

Mr. Chairman, I am here today to give Kentucky that support. I plan to support this nomination unless the nominee comes a-cropper in this hearing.

Mr. Chairman, I ask consent to file for the record a letter in support of the nominee from the Commonwealth of Kentucky.

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CHARLOTTE E. BALDWIN
SECRETARY

MARTHA LAYNE COLLINS
GOVERNOR

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET
OFFICE OF THE SECRETARY
FRANKFORT, KENTUCKY 40601
TELEPHONE (502) 564-3350

February 27, 1986

The Honorable Wendell H. Ford
United States Senator
Russell Senate Office Building
Room 173-A
Washington, D. C. 20510

Dear Senator Ford:

I ask your consideration for support of Jed Christensen as (permanent) Director of the Office of Surface Mining (OSM). Christensen appears to be making a sincere effort to improve OSM's working relationship with the states, and Kentucky in particular, to achieve the objectives of the Federal Surface Mining Act.

OSM has a critical need for leadership stability and this would be an important step in that direction. Christensen has been more responsive than any of the three directors that I have worked with.

Thank you for any consideration you can give to confirmation of his appointment.

Sincerely,

Charlotte E. Baldwin

Charlotte E. Baldwin
Secretary

CEB/vj

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The CHAIRMAN. A statement in support of the nomination by Senator Jake Garn of Utah will be included in the record at this point.

[The prepared statement of Senator Garn follows:]

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STATEMENT IN SUPPORT OF JED CHRISTENSEN

BY SENATOR JAKE GARN

Mr. Chairman, it is with sincere pleasure that I offer my full support to this committee the nomination of Mr. Jed Christensen of Utah to be the Director of the Office of Surface Mining. Jed is well qualified for this position because he brings with him the essential character traits of honesty and integrity that public service demands.

Several months ago, he walked into a situation at OSM which required someone of great patience. Jed has that quality and the attributes of considerable management experience in state and local government in the West. This experience adds to the leadership qualities he will need working with state and local officials as he administers mining reclamation programs.

In addition, his experience as a senior management official within the Department of Interior has provided him firsthand knowledge of interrelated natural resource management issues which are vital for the successful direction of this convoluted regulatory hydra we call OSM.

We are lucky that an official of Mr. Christensen's qualifications was available for appointment as Acting Director of the Office of Surface Mining when Secretary Hodel was faced with the necessity of filling a vacancy there. Since assuming that role nearly one year ago, Jed has established a very credible record of achievement under very difficult circumstances. I have great confidence in his ability to pursue this management responsibility and to do it well. I urge the committee to act favorably on this nomination.

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The CHAIRMAN. Mr. Christensen, you have had all the good of it. Now we will start in on this hearing.

We have your statement. It can be placed in the record or you can summarize it or deliver the statement as you see fit. The time is yours.

STATEMENT OF JED D. CHRISTENSEN, NOMINEE TO BE DIRECTOR, OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

Mr. CHRISTENSEN. Thank you, Mr. Chairman. If appropriate, I'd like to summarize my statement quickly.

The CHAIRMAN. The entire statement will be placed in the record. You are invited to summarize.

Mr. CHRISTENSEN. Thank you.

First, Mr. Chairman, I would like to thank Senator Hecht for that introduction—I appreciate that very much—and Senator Ford for his remarks.

Mr. Chairman and members of this committee, my name is Jed Dean Christensen and I am very honored to appear in front of this committee today as the President's nominee for the position as Director of the Office of Surface Mining Reclamation and Enforcement.

As a regulatory agency OSMRE has been involved in much controversy. The Surface Mining Act was controversial when it was passed, and we're experiencing continuing controversy in implementing the law. As we all know, there are many contentious ideas by many groups on how it should be implemented.

As Acting Director, I have found that managing conflict is an important part of running the agency and implementing the law. I believe stability and certainty from a management and policy standpoint are critical.

In trying to obtain stability and certainty, I have three personal objectives: one, clear policy direction; two, open lines of communication; and three, to establish a stable, consistent regulatory environment.

In terms of clear policy direction, I believe that coal production and environmental protection can be compatible, as Congress did when they passed the law. Furthermore, surface mining impacts can and should be controlled during mining and the land can and should be reclaimed. I am striving for a fair, evenhanded administration in order to achieve the purposes of the act.

I believe also that listening to and working with groups affected by the law inside and outside the agency, including Congress, is very important. I will listen to these people in considering a variety of viewpoints when making decisions.

As a regulatory agency, we are highly dependent on rules and regulations. As is well known, we have over 500 pages of such guidance on the books today. I believe that we need clear, consistent, logical regulations, developed in a manner that carefully considers the concerns of those most affected by them.

We are presently working on over 50 rulemakings and promulgating these rules is one of my top priorities.

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Mr. Chairman and members of this committee, I believe that we are establishing a stable foundation for effective, fair, evenhanded administration of the surface mining law.

If confirmed as Director of the Office of Surface Mining Reclamation and Enforcement, I look forward to the advice and counsel of Congress and this committee, as well as their support in achieving the goals I have outlined.

Thank you.

[The prepared statement of Mr. Christensen follows:]

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JED D. CHRISTENSEN
STATEMENT BEFORE THE SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES

MARCH 7, 1986

Mr. Chairman and members of the committee, my name is Jed D. Christensen, I am honored to appear before you today as President Reagan's nominee for the position of Director of the Office of Surface Mining Reclamation and Enforcement.

Since April 25, 1985, I have been serving as Acting Director of that organization within the Department of the Interior. Secretary of the Interior Don Hodel appointed me to that position on the basis of my prior management experience in the Interior Department as Deputy Assistant Secretary for Water and Science and before that as Staff Assistant to the Commissioner of Reclamation.

It is true that, as a regulatory agency, the Office of Surface Mining Reclamation and Enforcement is subject to intense scrutiny and often acute pressures from the coal industry it regulates, groups representing interests affected by that industry, and its counterpart state regulatory authorities. These parties, all affected in different ways by this agency's actions, have diverse and often conflicting views on how the Surface Mining Control and Reclamation Act should be implemented. In addition, within the organization there are varied and sometimes extreme individual opinions on how best to implement the law.

Bitter contention, internal and external to the organization, has made controversy a prominent part of the agency's short history. This controversy and tension was not unexpected. It is no secret that this highly complex, detailed law is the product of controversial deliberation and compromise among contending groups. Just as the Congress struggled to secure passage of the law, the Office of Surface Mining Reclamation and Enforcement is struggling to implement the law.

I believe that conflict can be an important catalyst to decisionmaking and can help shape policy, but I also believe that it should not be the force driving agency actions. As Acting Director, I have found that managing conflict is inherent in managing the agency and its implementation of the law. I strongly believe that stability and certainty, from both a management and policy perspective, are needed for the Office of Surface Mining Reclamation and Enforcement to carry out its mission of implementing the Act effectively.

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In striving to reach this goal, I have been guided by three personal objectives which I believe are fundamental to the effective management of the Office of Surface Mining Reclamation and Enforcement:

(1) Establishment of clear policy direction for the Office of Surface Mining Reclamation and Enforcement;
(2) Maintenance of direct and open lines of communication inside and outside the organization; and
(3) Development of a stable, consistent regulatory environment.

Clear Policy Direction. The Office of Surface Mining Reclamation and Enforcement needs clear policy direction underlying and guiding all operational and problem solving initiatives; policy direction on which the States, coal industry, and concerned citizens and environmental organizations can depend.

Simply stated, the keystone to the policy direction that I want to take, a direction that is supported by Secretary Hodel, is based on the positive commitment that the Surface Mining Control and Reclamation Act can work, and that it is the responsibility of the Office of Surface Mining Reclamation and Enforcement to make it work. Thus, all actions the agency takes and all decisions I make must be guided by the basic purposes of the Surface Mining Control and Reclamation Act. Those purposes envision a balance between national environmental needs and national energy needs. I support the goal of a viable coal mining industry able to help meet America's energy needs, but also able to operate consistently and effectively within the requirements of the Surface Mining Control and Reclamation Act. In the same context, I strongly support state primacy and believe that the states should be able to exercise flexibility in carrying out their programs.

I believe, as Congress did in passing the Act, that coal production and environmental protection can be compatible. The environmental impacts of surface coal mining can and should be controlled; mined areas can and should be reclaimed. I am striving for fair, even-handed and consistent regulation of coal mining and reclamation to assure that the purposes of the Surface Mining Control and Reclamation Act are carried out as intended by Congress.

Open Lines of Communication. I believe that the Office of Surface Mining Reclamation and Enforcement must have clear policy direction, but cannot afford to be rigid in the process of forming and implementing policy. I believe in working with the people who are affected by proposed agency actions. In that regard, I foster and depend upon open communication with agency personnel, as well as

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with people and organizations affected by agency actions and with the Congress. Effective decisionmaking is best served by consideration of a wide variety of viewpoints and full understanding of the consequences of proposed courses of action. I believe that building active, ongoing dialogue with knowledgeable and concerned sources within and outside the agency will contribute to an environment in which the Surface Mining Control and Reclamation Act can and will work.

Stable, Consistent Regulatory Environment. Because the Office of Surface Mining Reclamation and Enforcement is a regulatory agency, the vast majority of agency policy must be promulgated as Federal regulations. I believe that effective implementation of the law will be greatly facilitated by a stable, consistent regulatory environment. The nucleus of that environment must be clear, consistent, stable regulations developed in a manner that carefully considers the concerns of those most affected by them.

The Office of Surface Mining Reclamation and Enforcement has a large agenda of rulemaking actions with over 50 issues to be covered, including those remanded by the courts. I established a new Regulatory Development Staff within the agency that is directly responsible to me. This new staff has been instructed to work with the program and technical divisions and also to work with the affected parties-- the States, industry, and citizen groups-- in the development of new and revised rules and in the management of the rulemaking agenda.

In summary, Mr. Chairman, the short history of the Office of Surface Mining Reclamation and Enforcement has been checkered by many false starts toward achieving an effective approach to administering the Surface Mining Control and Reclamation Act. These have been well documented in studies and reports prepared by concerned people both inside and outside the agency. I have invested considerable time over the past 10 months to review the comments and recommendations. Many of the recommendations are being acted upon and I firmly believe we have "turned the corner." I further believe that we are establishing a stable foundation from which the Office of Surface Mining Reclamation and Enforcement can pursue the goal of effective, fair, and even-handed administration of the Surface Mining Control and Reclamation Act.

If confirmed as Director of the Office of Surface Mining Reclamation and Enforcement, I look forward to the advice and counsel of the Congress and this Committee, as well as their support in achieving the goals I have outlined.

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The CHAIRMAN. Senator Ford.

Senator FORD. Mr. Chairman, I have several questions. It probably might be just as well if some of them will be asked of the nominee, for him to respond in writing rather than taking up the time of the committee this morning.

The CHAIRMAN. That will be perfectly fine.

Senator FORD. The 2-acre permit is something that bothers a lot of us.

Mr. Christensen, last year Congress appropriated funds for over 23 full-time employees to work on the 2-acre exemption enforcement effort. I understand that the Office of Surface Mining and Reclamation Enforcement has failed to fill all of these positions.

Is that true?

Mr. CHRISTENSEN. Senator, it took some considerable time to get these positions filled, but I understand by the end of this month all of those positions will be filled.

Senator FORD. All of them will be filled?

Mr. CHRISTENSEN. Yes, sir.

Senator FORD. According to a report by the House Government Operations Committee, dated July 19, 1985, there is currently 150 million to 200 million in civil penalties owed by coal operators who have been found in violation.

What steps have you taken since becoming Acting Director of Office of Surface Mining and Reclamation Enforcement to rectify this situation?

Mr. CHRISTENSEN. Senator, that's a good question and I appreciate you asking that because we believe that is one area that we have really made progress in since I've been there.

As you know, the problem we had was a lot of this information was very dated; it was literally stored in shoe boxes and Xerox boxes.

Senator FORD. Say that again?

Mr. CHRISTENSEN. The information on these penalties was stored in a room in Xerox boxes, and had not been computerized.

In the last few months we have computerized the data and ensured its accuracy. We have finally determined the exact dollar figure of outstanding debt, which comes to $170 million.

Approximately $14 million of that has been closed out, collected, or the cases have been vacated. That leaves us about $156 million to collect.

I might just add that the large portion of that money results from fines that were levied during the very early part of this program, in 1978 through 1981.

Senator FORD. If reasonably available, could you provide by year the amount of civil penalties assessed and the amount collected and the amount outstanding?

Mr. CHRISTENSEN. Yes, sir. I would be glad to do that.

[The information follows:]

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CMIS & SOCM REPORT 29

YEAR	ASSESSED	COLLECTED	COMPLAINTS	UNCOLLECTED	OUTSTANDING
1978	1,733,237	388,927	36,818	6,050	1,306,886
1979	29,722,168	2,503,269	607,163	899,676	25,762,622
1980	63,906,803	2,780,739	1,246,384	2,193,735	57,756,042
1981	22,802,796	939,934	359,803	888,000	20,627,699
1982	10,340,438	334,717	77,246	225,000	9,704,660
1983	1,801,830	94,370	1,650	0	1,706,410
1984	17,269,320	325,873	59,761	0	16,892,566
1985	22,753,292	80,802	1,300	0	22,673,390
TOTAL	170,329,884	7,448,631	2,390,125	4,212,461	156,430,275

Senator FORD. I mean now you do not have to go back and go through the shoe boxes and Xerox boxes.

Mr. CHRISTENSEN. That's right. We can get a computer run.

Senator FORD. According to a December 1985 GAO report, OSMRE's Branch of Technical Assistance and Review recently drafted new permitting oversight guidelines and detailed procedures for overview of State programs.

What is the status of the implementation of those guidelines?

Mr. CHRISTENSEN. Senator, we agree that GAO made some very good points. We have developed oversight guidelines for the permitting process to be used where OSMRE is the regulatory agency and by our technical centers when they go into the States to see how the States themselves are doing in the permitting area.

Senator FORD. What is the status of the petition to initiate rulemaking filed by, I believe it's 10 citizens' organizations, and published in the Federal Register, I believe, of early January, January 3 I guess of this year, pertaining to permanent regulatory program or procedures for evaluating State programs, substituting enforcement of State programs and withdrawing approval of State programs.

Mr. CHRISTENSEN. Senator, we have published that petition in the Federal Register, asking for comments. We have been asked by several groups to extend the comment period on the petition because of the concerns that many people have. We have done that, and I believe the comment period will be closing in another couple of weeks.

Senator FORD. Now, as it relates to ownership, let's get that question on the table. Have you issued instructions to your contractor working on the AVS to limit ownership information according to a one-up and one-down situation to limit the extent of ownership information to companies owning or owned by a violator?

Mr. CHRISTENSEN. Senator, if I could discuss exactly what we are going to put into this system, I think we will feel more comfortable. I feel a little uncomfortable talking about the rule itself, since it is in final rulemaking and of course, the ownership information to be put into the system will be dependent upon the final rule.

However, what we are loading into the system is, at a minimum, to go down one step in the ownership chain and also what the revised Parker order requires, which is, at a minimum, to go one up in the ownership chain. That ownership information will be put in together with any other ownership information required by the final rule.

The control rule, of course, will identify anyone who shows up on the computer run as having a controlling interest in a company and would therefore also show up in the applicant violator system. We believe that the information we will be putting in will serve the purpose of the applicant violator system.

Senator FORD. Mr. Chairman, I think I will just skip the rest of my questions and file those for Mr. Christensen to answer in writing.

The CHAIRMAN. Thank you very much, Senator Ford.

Of course, all members of the committee will have the opportunity to submit questions in writing for response to the record, and of course we will ask for a prompt response to those questions.

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I hope members can have questions submitted by the close of business today so that we can get the responses in a timely manner, and therefore move towards a decision by this committee on the recommendation of the President for his appointment.

Senator Hecht.

Senator HECHT. No further statement. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Rockefeller.

STATEMENT OF HON. JOHN D. ROCKEFELLER IV, A U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator ROCKEFELLER. Thank you, Mr. Chairman.

I am very supportive of the nominee, Mr. Chairman. I want to make that very clear, and I also want to make it clear that West Virginia continues to have a very good relationship with OSM and I hope that we can keep it that way.

I have expressed here once before, bordering on bragging, that West Virginia was the first of the States to receive primacy. I was very proud of that because I was Governor at the time and I felt that we deserved it, and in any event we got it. And I do think that that matter of the relationship between OSM and the State is very important.

Now, there has been interest in the budget, Mr. Christensen, with respect to decentralizing OSM, decentralizing its activities, et cetera.

What is your understanding of the effect of the range of decentralization, and what kind of an effect is it going to have on the relation between OSM and the States and primacy?

Mr. CHRISTENSEN. Senator, one of the criticisms that we have had that we have addressed, is that we not only have policymaking, but too many operational type functions in Washington. The States have asked us to consider what could be delegated to the field offices to take care of.

Those are the kinds of things I am looking at. We have over a third of our people in the Agency in Washington. I am looking at each activity to see what could possibly be decentralized with appropriate authority and delegated to a lower level.

Those are the kinds of things that we are looking at, so the relationship should improve.

Senator ROCKEFELLER. You do not see any adverse respects or aspects to decentralization?

Mr. CHRISTENSEN. No, sir; not the way we are going about it. It is not being done as a vindictive thing or a major reorganization.

What we are doing is more looking at specific activities that could be done by the local field office director or the technical center, and give them authority to go ahead and do it as long as we maintain policy control in Washington.

Senator ROCKEFELLER. Mr. Christensen, there has been a lot of discussion and indeed some controversy about the management action plan, as you are aware. The coal industry has quite a few questions about that.

Is this going to be something in which you yourself are going to be ultimately hands-on and involved and a decisionmaker in, or is

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there going to be somebody else involved? Are you going to have primacy on that?

Mr. CHRISTENSEN. I believe so. It is eventually going to be up to me to actually implement the initiatives in that plan.

Senator ROCKEFELLER. But will its final development subject, of course, to the approval of the Secretary, will its final development be in your charge?

Mr. CHRISTENSEN. It will be between the Secretary and me. There are a number of important policy decisions that need to be made that the Secretary should be involved in.

Senator ROCKEFELLER. Understood. But short of the Secretary, you will be the person?

Mr. CHRISTENSEN. Yes, sir.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. I note that Senator Sasser has arrived. He wanted to make a statement and we will interrupt the testimony, if we may, to hear from Senator Sasser.

Of course, our colleague is more than welcome at this Committee and we look forward to hearing your views.

STATEMENT OF HON. JAMES R. SASSER, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator SASSER. Thank you very much, Mr. Chairman. I apologize this morning for being a little late, but I am sure the Members of this Committee are familiar with how this institution operates.

The CHAIRMAN. None of us has ever been delayed unavoidably ourselves.

Senator SASSER. Let me say, Mr. Chairman, that I appreciate the opportunity to appear before you today. I would like to share with the Members of this Committee the growing problems with the operations of the Office of Surface Mining in my home State of Tennessee. Quite frankly, we have a situation in Tennessee where the Office of Surface Mining is not meeting the mandate set forth in the Surface Mining Control and Reclamation Act of 1977. Our problems in Tennessee center on the Abandoned Mine Reclamation Fund. Tennessee is presently the only State which does not receive the State's share of contributed reclamation funds. This cutoff is due to the State government which, at the Governor's request, gave up regulatory control over the coal mining industry in the State of Tennessee.

As my colleagues know, the statutory language is quite clear, that once a State gives up primacy, it forfeits its 50 percent share of fees collected from mine operators in the State.

I have no quarrel with the Office of Surface Mining with regard to the State share of the Abandoned Mine Reclamation Fund. As I have noted, the law is quite clear on this point. If you give up primacy, you lose 50 percent of the money your State has contributed to the Abandoned Mine Fund.

I think that is tragic that that has occurred as far as the State of Tennessee is concerned, but that is a fact.

However, I am deeply concerned by the Office of Surface Mining's continued intransigency on releasing discretionary funds in Tennessee to perform reclamation efforts. As stated in its pream-

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ble, the Surface Mining Control and Reclamation Act is intended to both regulate ongoing surface mining and reclaim hazardous mines.

Even more specific are the statutory objectives of the Abandoned Mine Reclamation Fund. The money in that Fund is to, first and foremost, protect the public health, the public safety, to promote general welfare and protect property from extreme danger of adverse effects of coal mining practices.

Despite this clear and unambiguous statutory dictate, the Office of Surface Mining has only authorized work on one emergency reclamation project in Tennessee in over 2 years.

Now, Mr. Chairman, let me assure you and the distinguished ranking member and the other distinguished members of this Committee that we have more than a single priority of one reclamation site in the whole State of Tennessee. In fact, there are at least 16 abandoned mine sites throughout Tennessee which are priority sites warranting emergency action.

These sites pose a continuing threat to the health and safety of hundreds of Tennesseeans and have been the object of a number of newspaper articles, letters to the editor, a considerable amount of public and media attention in the eastern part of Tennessee.

A few chilling examples will illustrate the depth of my concern on this issue. In Campbell County, TN, the Ollis Creek site involves both toxic spills and acid mine drainage. The Ollis Creek watershed into which this drainage runs supplies water to the City of La Follette, TN, a town of about 6,000 souls.

In Fentress County, TN, a massive mudslide from an abandoned mine site washed away the doubletop road. This slide occurred in 1983. Since that time, Fentress County, which is one of the lowest per-capita income counties in the whole United States has not had sufficient resources to repair this road and it has remained unusable for over 2 years.

The doubletop road, as it is called, provides the most direct access for residents of a sizeable portion of that county to the Fentress County Hospital. The road will simply not be repaired without funds.

The list goes on, Mr. Chairman. Abandoned mines are creating very serious flooding threats for many small rural Tennessee counties. Deep open mine shafts are attractive nuisance areas where children live and play. Acid mine drainage as well as spilloff with low pH levels is a common occurrence in many Tennessee counties.

The priority abandoned mine sites across Tennessee violate both the letter and the intent of the Surface Mining Control and Reclamation Act of 1977. Yet, the Office of Surface Mining has not moved to address these violations; this, despite repeated calls for action by members of the Tennessee congressional delegation. Just two weeks ago, Congressman Jim Cooper of the 4th Congressional District in Tennessee and I met with Mr. Christensen to highlight our concerns and to discuss this problem.

He seemed to understand our concern, but stressed that any emergency funds spent in Tennessee would remove the incentive for the State to regain primacy.

Well, let me put Mr. Christensen and this distinguished Committee on notice that this incentive simply has not worked. Indeed,

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Tennessee's Governor has notified the Department of the Interior, just this week, that Tennessee will not try to regain responsibility for regulating surface mining in the State. Quite frankly, this is one carrot that has not proved very alluring, at least for the State of Tennessee.

Given this pronouncement from the Governor of our State, why won't the Office of Surface Mining release more emergency funds in Tennessee? Why should our land and our people continue to suffer from a bureaucratic squabble between State government and the Federal Government, leading absolutely nowhere?

Mr. Chairman, it reminds me very much of the days when I practiced law, when the children were the innocent victims of a squabble between a divorcing mother and father. That is very similar to where the people of the State of Tennessee are in this particular situation, caught between the squabble between State and Federal Government.

Is it going to take a tragic accident, a child being trapped or falling into one of these open mines, to prod the administration into releasing some discretionary funds for the State of Tennessee? Both the Tennessee Valley Authority and the Soil Conservation Service have the competence and are willing to take these funds and take the necessary steps to make sure that these sites are made safe and that the runoffs and other dangerous situations are controlled.

I will be very interested in seeing if Mr. Christensen has any constructive answers to these questions. I have asked Mr. Christensen, along with Congressman Cooper and other members of our congressional delegation, to explore a possible compromise solution to our problems in Tennessee in a meeting earlier this month, and I am still waiting for a response.

I believe that Mr. Christensen's response to my request of 2 weeks ago to questions I have raised today will say much about his ability to faithfully meet the mandates of the Surface Mining Act.

These indicators of his leadership on some very difficult issues could prove very helpful if and when his nomination comes before the full Senate.

Mr. Chairman, I think that we have an obligation, both Mr. Christensen and the Office of Surface Mining, and those of us in the Federal Government to try to find a way to alleviate this very serious problem in my State.

The easiest thing to do would simply be to cite the reasons why we cannot do it. It is our job to try to deal with serious problems and I think we need to be innovative here and come up with the necessary discretionary funds to let the Federal Agencies deal with this very serious problem that apparently the State government and State agencies, for unknown reasons to me, are unwilling to deal with.

Mr. Chairman, I thank you for this opportunity to appear here today.

The CHAIRMAN. Thank you very much, Senator Sasser. I appreciate your statement and I understand your concern.

Senator SASSER. Thank you.

The CHAIRMAN. Are there any questions of the Senator?

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Senator FORD. I was just getting ready to ask, I think the Senator alluded to it, that apparently the Governor has not only sent the letter, but he has made it public that Tennessee will not involve itself in trying to regain primacy.

The legal aspect of it, as you say, is clear; but the humanitarian aspect of it is somewhat crying out.

Senator SASSER. Yes. I think if I could say to my distinguished colleague from Kentucky, there is a way in which the Federal Government can meet our responsibility here. That is through discretionary funds available to the Secretary of the Interior. I am confident that he would act on the recommendations of Mr. Christensen and the Tennessee Valley Authority and the Soil Conservation Service.

Both Federal agencies stand willing to eradicate this blight on our land and remove this danger to our people if discretionary funding is forthcoming.

Senator FORD. Thank you, Mr. Chairman.

Senator ROCKEFELLER. Mr. Chairman.

The CHAIRMAN. Certainly. Senator Rockefeller.

Senator ROCKEFELLER. Could I ask, not of Senator Sasser, but of Mr. Christensen?

The CHAIRMAN. Well, let us find out if there are further questions of Senator Sasser.

Senator FORD. I have none.

The CHAIRMAN. I thought your State legislature took an action but I do not recall exactly what the nature of that action was in Tennessee with respect to the Abandoned Mine Reclamation Fund.

My recollection is that the State had taken action addressed primarily towards the availability of Secretarial discretionary funds rather than passing a resolution to not seek primacy. Is that correct?

Senator SASSER. The Governor has indicated the State will not seek primacy. The State legislature, as I recall, Mr. Chairman, has not spoken on the subject. I am just speaking now off the top of my head. I have not reviewed these facts today.

The CHAIRMAN. It was my recollection that they did pass a resolution during this session of the legislature. I have forgotten the exact date, but I believe it was directed more towards trying to get the Secretarial discretionary funds for projects in your State rather than addressing whether or not they intended to regain primacy.

My only purpose in stating this is that obviously both the legislative branch and the executive branch in your State are not seeking at this time to move toward regaining primacy.

Senator SASSER. That is correct.

The CHAIRMAN. But they are seeking to get some discretionary funding to meet some of the situations that you have described.

Senator SASSER. The Governor has not expressed himself on it. The legislature may have.

The CHAIRMAN. Thank you very much.

Are there further questions of Senator Sasser?

[No response.]

The CHAIRMAN. Thank you again.

Senator SASSER. Thank you.

The CHAIRMAN. Senator Rockefeller, you said you had a question.

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Senator ROCKEFELLER. Mr. Chairman, just one more question. With respect to primacy there is some controversy, as you know, Mr. Christensen, about the 10-day notice matter. I do not think this has been a problem in West Virginia, but then again it could be, so it is a process question.

If the OSM finds an operator to be in violation and then proceeds to act against the operator—and there have been, I understand some cases like that—even though the State plan has been approved by OSM, that would appear to raise a question.

Now, from a personal basis, I think States have to be vigorous. If they are going to deserve to keep primacy, obviously they are going to have to be vigorous. But in those cases where a State does have the primacy relationship, should not the process be that OSM works with the State and have the State bring action against the operator, as opposed to bringing action directly against the operator?

Mr. CHRISTENSEN. Senator, I couldn't agree more with what you are saying. I think it is unfortunate that there have been many instances where a dispute between the OSMRE inspector and the State, has caught the operator in the middle. And that has been something that we have got to stop doing.

If there is a policy dispute, I believe that that should be settled between the State and the OSMRE and leave the operator out of the middle of it.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

I have been handed a press release issued by the Governor of Tennessee. It is not just a press release; I would judge it to be a commentary as well, by the Knoxville News Centinel, in which the Governor has said they will stop trying to regain primacy but he would support an amendment to the State budget for a State program for abandoned mine land reclamation.

The press account also states what I think is correct; that the State had assumed primacy in 1982, but that the Federal Government took the program back in 1984 because of problems of inspection and enforcement.

Is that right, Mr. Christensen?

Mr. CHRISTENSEN. That is right, Mr. Chairman.

The CHAIRMAN. The Governor has also indicated that he would work towards regaining State control before leaving office in 1987. Is that your understanding?

Mr. CHRISTENSEN. Mr. Chairman, I have had several discussions with the Governor and his people over the last ten months, and I was under the impression that they were going to work towards regaining primacy. Yes, sir.

The CHAIRMAN. I might just note that this press account is dated March 5.

What is the policy of the administration with respect to the use of discretionary funds, as Senator Sasser described it, as a carrot?

Mr. CHRISTENSEN. Mr. Chairman, the policy of the Department for many years has been a State that does not have primacy will not have an abandoned mine land program. And that follows the law. There's no question there.

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However, in a State that does not have primacy, OSMRE continues to take care of any emergency work that is declared, and we have been doing that. The Senator is quite correct in saying that there has only been one major project done in the last two years. That is approximately a $1.8 million project that is getting underway now. There was a much smaller project done several years ago.

That has been our policy. We will take care of emergency projects; we will immediately abate the emergency and, through the Secretary's discretionary money, finish the project over the time frame that is necessary to take care of that problem.

The CHAIRMAN. I want to return for a moment to the question of the fines and levies that are in that horrible backlog. I guess the best way to state it is simply to note that this Committee has been concerned about that for some years.

You have indicated that the records that were in the Department were kept in pasteboard boxes and, as I recall, in an unlocked room with a lot of foot traffic through that room. In other words, they were not organized well, they were not secured; they were open to whatever kind of manipulation or tamperage that might have occurred by anybody who could have walked into that room.

You are seeking the recovery of money, fines, and forfeitures. I think I have made the comment before that I practiced law. I was, in the vernacular, just a poor country lawyer before I came here, but I think I could defend any client against your attempts to collect, if indeed the records were inadequate or inadequately secured.

Is not that a real problem with respect to the expectation of collecting on these fines and forfeitures?

Mr. CHRISTENSEN. Mr. Chairman, you are absolutely correct. The problem we have is that we have old cases that date back as far as 8 years ago. There are many of these cases. The majority of these cases is going to be uncollectible. We ought to be honest and admit that.

The CHAIRMAN. Well, I think you said earlier that the majority, the $156 million that remains in that category, occurred in 1978, 1979, 1980, and 1981.

Do I understand that you think you are making some progress on determining what should be done with these cases?

Mr. CHRISTENSEN. Mr. Chairman, we have finally determined how many cases there are, and what the amounts are, and what is really worth going after and what is not. We are working actively with the Solicitor's Office to categorize those cases to determine which ones we should simply write off, so to speak, or put into a dormant file, realizing that there's no way you will ever collect them.

The CHAIRMAN. If there is no way you will ever collect them, should they not be just written off and get it behind us?

Mr. CHRISTENSEN. Absolutely.

The CHAIRMAN. It just seems to me for us to carry on the books $156 million of potential, when any reasonable analysis would say the likelihood of collecting these moneys is very low—now, then how long is it going to take you to go through the process to determine which ones are collectible and which ones are not?

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Mr. CHRISTENSEN. Mr. Chairman, because of the caseload—there are over 10,000 cases that remain to be examined—it will take several years to actually go through them.

We are under a court order to look at many of these cases and before they are written off, so to speak, we have to determine if there are any assets that can be attached to pay for part of these assessed penalties. We have to go through what is called a net worth determination.

We are going through that process. It is expensive; and it takes a long time, but once it is determined there are no assets, that case will be put into a dormant file. The information on the violators themselves will be put into the Applicant Violator system, that will block those people from getting a future permit.

The CHAIRMAN. If that is based upon any inadequate information, you will be on the receiving end of a lot of lawsuits, won't you?

Mr. CHRISTENSEN. Mr. Chairman, that is one of our major concerns in developing such a system; that the information in it is accurate, and that we do not overload the system with information that is not needed to determine if the person previously violated the Act.

The CHAIRMAN. I do not know of my own knowledge what the condition of those files may be, and obviously it will take quite a little analysis by people on your staff, looking through those files, determining what the information is, determining whether the entities still exist, following up with the question of whether or not witnesses are still available 6 or 7 or 8 years after the events.

I am a little concerned that we should not allow that to exist for several years into the future. If there is indeed any allegation that involves current operators or potential operators, they are entitled to some justice as well. If they are in violation, we should collect. If the evidence is insufficient to prove that, they ought to be exonerated and cleared.

Mr. CHRISTENSEN. Mr. Chairman, we are placing our major emphasis on current cases. The best collection effort is going to be made while the cases are fresh and current. We are trying to get these cases through the system very quickly. The backlog is our second priority.

The CHAIRMAN. I understand from your standpoint that makes perfect sense.

Mr. CHRISTENSEN. Yes, sir.

The CHAIRMAN. I do not criticize that, and it is probably the right ordering of priorities. But maybe either the administration or we should insist upon adequate funding to clear up that backlog. This situation is unjust for the country and to the taxpayers of this country. It may also be unjust to a large number of people whose names or operations show up in those files with inadequate information to determine whether or not they are guilty of any violation.

Mr. CHRISTENSEN. Mr. Chairman, I share the same concern.

The CHAIRMAN. Just because somebody in 1978 or 1979 said they did something wrong is not a sufficient reason to keep them under a dark cloud hovering over them for decades.

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Mr. CHRISTENSEN. You're right. That is why these cases have to be closed out.

The CHAIRMAN. I think they need to be closed out. I know that the minute you write off some of these old claims, you are immediately going to be hit by somebody who says, "See, this administration didn't want to really get those crooks," because they can indulge in a presumption of a guilt, which the government is not entitled to do.

I think you have a duty to the taxpayers, and that is not just yours; it is ours, too. If we in the Congress have created a situation that caused the previous administration and this administration to maintain files on alleged violations but with inadequate tools to make a determination, then we are derelict in our duties.

I would look forward to working with you and with this administration and with my colleagues in this Committee and in the Senate in an attempt to determine what we can and what we should do to clear up those old matters and get the books cleared.

The taxpayers are entitled to it. The people whose names and operations appear in those pasteboard boxes at some point are entitled to it.

Mr. CHRISTENSEN. Mr. Chairman, we look forward to working with you, your Committee and staff people.

The CHAIRMAN. Thank you very much.

Let me ask one question about the 2-acre limitation. When the bill was passed, it was thought desirable to avoid the full regulatory weight on small operations, what were in the lexicon of the times called "mom and pop" operations.

I have a little trouble seeing the mom out there on a D-9 Cat, but maybe she is.

Senator FORD. Mr. Chairman, may I say that she kept the books and pop was out there, and it was a mom and pop operation, and many families operated that way.

The CHAIRMAN. And we tried to avoid the regulatory weight on that kind of operation. At the same time, the evidence has become growing and clear that that exemption has been subject to abuse by some who were not mom and pop. I think the Senator from Kentucky would agree with that.

I know we've had a number of conversations about that abuse.

Have we come to the time when we should remove that exemption as being worse than the problem we sought to avoid?

Mr. CHRISTENSEN. Mr. Chairman, it is a serious problem. There has been tremendous abuse of the 2-acre exemption. Many States, such as the State of Kentucky, actually do regulate these kinds of mines and many other States have taken that upon themselves to have a more stringent law than the Federal law.

I believe it is something we certainly ought to look at with you and your committee.

The CHAIRMAN. Well, I am ready to take a look at it. I think it obvious that that exemption became an abuse.

I am also aware that States like Kentucky have already moved to close down this area of abuse and have restricted that abuse.

Senator FORD. Mr. Chairman, I have several items here as it relates to the 2-acre permit. I think Kentucky, even though it was

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somewhat agreed as it relates to mom and pops, we did require application for a permit under the 2 acre.

I have three things, in fact I have eight items, Mr. Chairman, I would like to place in the record that we have been able to see improvement under the acting chairmanship of Mr. Christensen.

I would like to read, if you don't mind—it will take about 60 seconds—that the most important single change has been the processing of the 2-acre application by a team of specialists in Frankfort. Centralization of the review process has resulted in greater consistency and is paying huge dividends by screening out those who are ineligible for the 2-acre exemption in the first place.

As a result, the approval of 2-acre permits in 1985 dropped by more than 65 percent compared to 1984. The Department has now doubled the inspection frequency from once a month to twice a month on 2-acre mines where operations are actively being conducted.

Another item, the Department has proposed legislation to increase the minimum bond for the 2-acre permit from $2,000 to a range of $4 to $7,000 per acre. In addition, the regulatory changes are being developed to strengthen the 2-acre programs.

Now, if you recall, Mr. Chairman, the OSM at that time—I believe it was Mr. Heinz—had a great deal of input as it related to primacy. He went to Kentucky and scrutinized the legislation that was about to be passed by the Kentucky legislature.

He insisted, or they would not approve our legislation, that 2-acre permitting process be in our legislation. So we were pushed into that by the Federal Government, and we in Kentucky did not have the 2-acre permit in our legislation. So the reason we have it is because the Feds told us to put it in or else we could not get primacy.

Mr. Chairman, I have eight items here that we see as improvement. Kentucky, having the largest production, always gets the largest criticism. We are fighting and doing our best, I think, to improve it day by day.

So I would like to submit for the record these eight short paragraphs of improvement under Mr. Christensen's tenure as it relates to Kentucky.

The CHAIRMAN. They will be included in the record at this point.

[The information submitted by Senator Ford follows:]

1. The most important single change has been the processing of two-acre applications by a team of specialists in Frankfc t. Centralization of the review process has resulted in greater consistency and is paying huge dividends by screening out those who are ineligible for the two-acre exemption in the first place. As a result, the approval of two-acre permits in 1985 dropped by more than 65% compared to 1984.

2. Revised permit application and field examination forms are providing the Department with more information to make accurate decisions concerning the problem of "relatedness." These improvements have resulted in decisions not to issue nearly 40% of the applications received.

3. The Department has now doubled the inspection frequency from once a month to twice a month on two-acre mines where operations are actively being conducted.

4. Those two-acre operators who have exceeded their boundaries are consistently being assessed a minimum penalty of $5,000 and are required to reclaim the areas to permanent program standards or obtain permanent program permits, thereby assuring reclamation.

5. Alternative enforcement action in the form of individual civil penalties is being pursued against virtually all corporate violators; and injunctive relief is being sought for those priority cases requiring reclamation.

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6. The Department has increased the reporting of enforcement information to the Office of Surface Mining for use in preparing reports to Congress and the courts.
7. The Department has proposed legislation to increase the minimum bond for a two-acre permit from $2,000 to a range of from $4,000 to $7,000. In addition, regulatory changes are being developed to strengthen the two-acre program.
8. The Department has openly provided computer tapes of the Kentucky Surface Mining Information System (SMIS) to OSM and the environmental community to assist each in their evaluation of Kentucky's two-acre program.

The CHAIRMAN. I thank the Senator for the comments as well. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman. I have had the opportunity to visit with the nominee and I am well satisfied with your credentials.

With respect to the status of the management action plan, where are you now on that?

Mr. CHRISTENSEN. Senator, we have been working on this management action plan for some considerable time and I believe we will be issuing another draft in April.

Senator WARNER. So that we could receive comment, that is, you could receive comment in what period of time? In other words, when would you hope to implement it?

Mr. CHRISTENSEN. It was originally issued, as you remember, as an advanced draft. We received over 600 pages of comments from interested parties on this advanced draft.

What we have done is spend the last few months incorporating those comments into this next draft and clarifying many of the things in the advance MAP. What we hope to do is issue another draft in April, leaving it as a working type document, and then implement the various parts of it over the next several years as time and resources permit.

Senator WARNER. It would be my hope that the subcommittee of this committee, of which I am chairman, would have an oversight hearing. When do you think a propitious time for that hearing would be?

Mr. CHRISTENSEN. Mr. Chairman, we would look forward to a hearing, any time after the MAP is out, after the first of April.

Senator WARNER. Any time after the first of April?

Mr. CHRISTENSEN. After the MPA is published. Yes.

Senator WARNER. Then we will schedule it accordingly.

What is your position on the jurisdiction of OSM to take enforcement actions following final bond release by a State of a mining and reclamation site?

Mr. CHRISTENSEN. Senator, we're talking about permanent program bonds in this particular instance. Once the obligations in the Surface Mining Act have been met as far as meeting the standards of reclamation and the bond is released, then there's no further obligation under the surface mining law to that operator.

Now, that opinion is not universally held. It is a complex issue and there are a number of opposite opinions. We may have to go through an outreach program to make sure that people understand that, but that's how I feel about it personally.

Senator WARNER. The initial management action plan—you referred to it, I think, as MAP—outlined a blacklist system under which utilities would be encouraged not to buy coal from any oper-

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ator which has any outstanding violations or failure to abate cessation orders.

What is the status of the buyer blocking the proposal as a part of OSM's enforcement plan?

Mr. CHRISTENSEN. Senator, when the first management action plan came out, we had numerous concerns expressed to us by various groups regarding this concept. They have raised many issues that need to be examined before this idea even starts to proceed and before we do anything even on a trial basis.

What I would assure you is, before we even attempt to implement such a voluntary buyer blocking program, we will look at every concern that's been expressed—legal concerns, concerns about liability, anything like that—and if we have doubts that such a system would have problems, would not work or would cause more problems than it's worth, we will not implement it.

Senator WARNER. Under the administration's budget request, the administration's enforcement grants to the States are up dramatically in fiscal year 1987; $7.4 million, I believe, is the figure. OSM in their budget justification includes increases needed to carry out the intent of the act with adequate support.

What is the adequate support referred to in these justifications?

Mr. CHRISTENSEN. Senator, our concern is that we rely heavily on the States to take the lead in the implementation of this law. We want to ensure that they have adequate resources to be able to do that.

So what we're talking about is an increase to make sure that there are adequate funds to pay for our 50-percent share of the States' regulatory program. The increase basically comes from several things.

First, there have been a lot of rule challenges and changes that require more resources by the States to implement the law and second, simply to catch up with inflation over the last 3 years.

Senator WARNER. Will any of the $7.4 million be expended to implement any portion of the OSM management action plan, which of course is not in final form yet?

Mr. CHRISTENSEN. No, sir. That is not the purpose of that money.

Senator WARNER. Thank you, Mr. Chairman. This candidate has my support.

The CHAIRMAN. Thank you very much, Senator Warner.

Senator Rockefeller.

Senator ROCKEFELLER. Mr. Chairman, just two quick ones.

I was talking earlier about the decentralization as reflected in the budget. I guess my concern on that, and I would like to get your view on this, is particularly with respect to policymaking. If all policymaking is held here in Washington, then that guarantees the evenness in obviously the distribution of that policy as it applies to various States.

If in the decentralization process, policy is included and it goes out into the field or the various regions or whatever, then there could be an unevenness of enforcement and policy.

What is your view about that?

Mr. CHRISTENSEN. Senator, when we talk about policy decisions, we need a lot of technical and other assistance before we make

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final decisions. We would involve many groups in the policymaking.

Once the decision is made, that information is disseminated out to the field for implementation.

Senator ROCKEFELLER. So it would be always a national central policy, so to speak?

Mr. CHRISTENSEN. That's right. To make sure that the policy was implemented in an evenhanded manner.

Senator ROCKEFELLER. There is, as you know, Mr. Christensen, some concern by operators that their payments to the AML Fund sit around for a long time before they are distributed.

What would be your view or, in fact, would you support an effort to make that trust fund an interest-bearing account?

Mr. CHRISTENSEN. Senator, I believe that the Office of Surface Mining did talk to the Treasury several years ago about this and the determination at the time was this is not a true trust fund that would actually accrue interest.

These are funds that go into the Treasury and are appropriated back out to us by the Congress. At this point there is no effort to try to put interest into this account.

Senator ROCKEFELLER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

I have no further questions at this time. Senator Wallop has a group of questions which will be submitted in writing for response to the record in writing. Other members may have the same privilege until the close of business today.

If there be no further questions, the committee will stand adjourned.

[Whereupon, at 11:04 a.m., the hearing was adjourned.]

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APPENDIXES

APPENDIX I

Biographical and Informational Statements of Jed D. Christensen

JED D. CHRISTENSEN, ACTING DIRECTOR

OFFICE OF SURFACE MINING

U.S. DEPARTMENT OF THE INTERIOR

Jed D. Christensen was selected in April 1985 as acting Director of Interior's Office of Surface Mining (OSM) by Secretary of the Interior Don Hodel. At the time of his selection, Christensen was Deputy Assistant Secretary of the Interior for Water and Science. He joined the Interior Department in 1981 as staff assistant to the Commissioner in the bureau of Reclamatiop.

Christensen's administrative experience in complex technical and policy areas led to his assignment to take on the management responsibility for OSM. Secretary Hodel pointed out that Christensen played an important role in improving management in three of the Interior Department's major components--the Bureau of Reclamation, the Bureau of Mines, and the U.S. Geological Survey.

OSM was created under the 1977 Surface Mining Control and Reclamation Act to assure that coal mining would be done in an environmentally sound manner; that lands mined for coal would be properly reclaimed; and that land and water resources adversely affected by past unregulated mining practices would be reclaimed and restored.

Christensen brought considerable experience in city and county management with him to Washington. He was Director of Finance and Administrative Services for the City of Provo, Utah, where he coordinated a multi-faceted finance office and acted as City Treasurer.

He also was Budget Officer for Clark County, Nevada; Senior Management Analyst in the City Manager's Office, City of Santa Ana, California; and Program Analyst with the Budget and Research Department of the City of Phoenix, Arizona.

Christensen studied at the American University of Beirut, Lebanon in 1974. He earned a bachelor's degree in Psychology from Brigham Young University, Provo, Utah. He received a master's degree in Public Administration from Arizona State University at Tempe, Arizona.

Christensen was born in Salina, Utah. He lives in Springfield, Virginia, with his wife, Lynda, and four children: Brett, Monique, Simone, and Adrienne.

-DOI-

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UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Christensen (LAST) Jed (FIRST) Dean (OTHER)

Position to which nominated: Director, Office of Surface Mining Reclamation and Enforcement

Date of nomination: December 10, 1985

Date of birth: 11 (DAY) 3 (MONTH) 1945 (YEAR) **Place of birth:** Salina, Utah

Marital status: Married **Full name of spouse:** Lynda Stewart Christensen

Name and ages of children
Monique Christensen - Age 15
Brett Christensen - Age 12
Simone Christensen - Age 10
Adrienne Christensen - Age 2

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Brigham Young High School, Provo, Utah	1957-1963	High School	1963
American University of Beirut, Lebanon	1964		
Brigham Young University Provo, Utah	1967-1970	B.S.	1970
Arizona State University Tempe, Arizona	1970-1972	M.P.A.	1972

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

4/85 - Pres.	Acting Director, Office of Surface Mining, Dept. of Interior, Wash.,DC
2/84 - 4/85	Deputy Assistant Secretary, Office of Assistant Secretary, Water and Science, Dept. of Interior, Washington, D.C.
8/81 - 2/84	Staff Assistant to Commissioner, Bureau of Reclamation, Dept. of Interior, Washington, D.C.
8/79 - 8/81	Director, Finance & Administrative Services, City of Provo, Utah
11/77 - 8/79	Budget Officer, Clark County, Nevada, Las Vegas, Nevada
5/75 - 10/77	Senior Management Analyst, City Manager's Office, City of Santa Ana, CA
7/72 - 5/75	Program Analyst, Budget & Research Dept., City of Phoenix, Arizona

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Employment record—Continued

Military service: Describe any military service not listed above, including dates, rank, and type of discharge.

Utah National Guard 1963-1971 Rank E-4

Honorable Discharge

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Graduate Assistantship at Arizona State University 1971-72

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Dates	Office held (if any)
International City Management Association	1972-79	
Municipal Finance Officers Association	1975-79	
American Society for Public Administration	1972-79	

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Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written.

Article titled "Charting a Course for OSM," published in LandMARC by the Mining and Reclamation Council of America, in the September/October 1985 issue.

Future employment relationships:

1. Will you sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate?

   Not Applicable - I'm currently employed by the Federal Government.

2. Do you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization?

   No.

3. Has a commitment for employment after you leave government been made to you by anyone? Have you made any such commitment?

   No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

   Not Applicable.

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Future employment relationships—Continued

(b) If you have been appointed for an indefinite term, are there any known limitations on your willingness or ability to serve for the foreseeable future?

No.

Financial statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None.

3. Are you currently a party to any legal action? If so, describe its nature and status.

No.

4. Have you ever declared bankruptcy? If so, describe the circumstances.

No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No.

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Potential conflicts of interest:

1. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None.

2. Describe any business relationship, dealing or financial transaction (other than taxpaying) that you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, which might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

3. Describe any lobbying activity which you have performed during the past 10 years with respect to legislative or administrative actions at the Federal, State or local level.

I have never engaged in lobbying activities.

4. Have you been informed of the conflict of interest laws and regulations applicable to the position to which you have been nominated?

Yes.

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Potential conflicts of interest—Continued

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to this form and the attachments thereto. Attach a statement of the appropriate agency ethics official explaining the applicable laws or regulations, any potential conflicts, and the action required to resolve such conflicts.

See Attachment.

6. Explain how you will resolve any potential conflicts of interest that may arise in the future if you are confirmed for the position for which you have been nominated.

See Attachment.

Public disclosure: Do you have any objections to this form and the attachments thereto being made public?

No.

AFFIDAVIT

I, Jed D. Christensen, being duly sworn, hereby state that I have read the foregoing Statement for Completion by Presidential Nominees, including all attachments thereto, and that the information provided therein is, to the best of my knowledge and belief, current, accurate, and complete.

Jed D. Christensen
(Signature of Nominee)

Subscribed and sworn to before me this 29 day of Jan., 1986

L. Jean Pafford
Notary Public

My Commission Expires November 14, 1988

Form approved by the Committee February 5, 1985.

U.S. GOVERNMENT PRINTING OFFICE 1985—43-088

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Potential conflicts of interest--Continued

5. I do not believe any of my prior relationships pose the risk of an actual or potential conflict of interest with my official duties as Director, Office of Surface Mining Reclamation and Enforcement.

6. In the event the Department of the Interior Ethics Counselor informs me that any of my prior relationships create an actual or potential conflict of interest, or in the event I draw such a conclusion myself, I shall consult with the Department Ethics Counselor and, in light thereof, then shall take such remedial steps as may be required by applicable statutes or regulations or which otherwise appear to be appropriate in the circumstances.

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SF 278 (Rev. 1985)
FPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3209-0040

Reporting Status (Check Appropriate Box)			OGE Use Only	Date of Appointment, Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent	☒ New Entrant, Nominee, or Candidate	☐ Termination Filer		December 10, 1985	

OGE OF THE INT. Agency Use Only ★ OCT 15 1985 ★ Received

Reporting Individual's Name	Last Name	First Name and Middle Initial
	CHRISTENSEN	JED D.

Position for Which Filing	Title of Position	Department or Agency (If Applicable)
	Director, Office of Surface Mining Reclamation and Enforcement	Department of the Interior

Location of Present Office	Address (Number, Street, City, State and ZIP Code)	Telephone No. (Include Area Code)
	Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240	(202) 343-4006

Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held
	Deputy Assistant Secretary for Water & Science - 2/84 - 4/85 Deputy Director, Office of Surface Mining - 4/85 - Present

Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination	Do You Intend to Create a Qualified Diversified Trust?
	Energy and Natural Resources	☐ Yes ☒ No

Certification	Signature of Reporting Individual	Date (Month, Day, Year)
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Jed D. Christensen	10-15-85
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
	Gabriele J. Paone Designated Agency Ethics Official	DEC 10 1985
Agency Ethics Official's Opinion	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
The information contained in this report discloses no conflict of interest under applicable laws and regulations	✓ Gerald R. Rau	12/13/85
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for Income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

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SF 278 Rev 1981
5 CFR Chapter XIV
U S Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name	Assets and Income	Page Number	2	Schedule A
CHRISTENSEN, JED D.				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. **Exclude** your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income; only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources		BLOCK B Valuation of Assets							BLOCK C Income													BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐		Category of Value (X)							Type of Income (X)							Category of Amount of Income (X)									
			None (or less than $1001)	$1,001 $15,000	$15,001 $50,000	$50,001 $100,000	$100,001 $250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101 $1,000	$1,001 $2,500	$2,501 $5,000	$5,001 $15,000	$15,001 $50,000	$50,001 $100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
S	Exempt	R Y Z Common		X		X			X								X								X	
DC:		Doe Jones & Smith, Hometown USA													principle income								$10,000			
1	S	S. Paul Stewart Enterprises** 4620 NE Cliff Ave, Provo UT				X					X	X			Ptnrship Income								$0,330			
		E.F. Hutton (Cash Reserve)	X								X						X									
3		Putnam Mutual Fund (E.F. Hutton)	X						X								X									
4		E.F. Hutton Emerging Growth Series (IRA)	X						X							X										
5		Washington Federal Savings & Loan (IRA)	X								X						X									
6	S	E.F. Hutton Emerging Growth Series (IRA	X						X							X										
7	S	Washington Federal Savings & Loan (IRA)	X								X						X									
8		Mountain Cabin Lot, Provo, Utah, Sundance Resort				X										X										
9		Building Lot, Belin, NM (Unimproved Building Lot)	X													X										
10		**S. Paul Stewart Enterprises, Provo, Utah 84604 - Investments in Farm & Other Property in Utah & Idaho - No proximity to Federal Lands																								

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(Continued on Next Page)

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SF 278 (Rev. 1/95)
FRM Chapter 734
U.S. Office of Personal Management

Form Approved:
OMB No. 3209-0001

Reporting Individual's Name	Assets and Income	Page Number	Schedule
CHRISTENSEN, JED D.		3	A

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

	BLOCK A Assets & Income Sources	BLOCK B Valuation of Assets								BLOCK C Income																		BLOCK D Transactions Test	
	Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐	Category of Value (X)								Type of Income (X)								Category of Amount of Income (X)											If yes, complete Schd. B Part I for those assets including those sold for a loss
		None (or less than $1001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
	S or DC / Examples: X Y Z Common / Dun Jones & Smith, Hometown, USA		X			X		X										X					$50,000		X	
10	DC Oppenheimer Money Market Fund, Inc.		X							X					X												
11	DC Oppenheimer Money Market Fund, Inc.		X							X					X												
12	DC Oppenheimer Money Market Fund, Inc.		X							X					X												
13	DC Oppenheimer Money Market Fund, Inc.		X							X					X												
14	S Practicing C.P.A. and Teacher at Wo. Va. Comm. College													Salary													
15	Office of Surface Mining Washington, D.C. 20240													Salary									$70,500				
	S Teacher for CPA preparatory course													Salary													
16																											
17																											
18																											

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SF 278 (Rev. 1/88)
1700 Chapter 734
U.S. Office of Personal Management

Form Approved
OMB No. 3209-0040

Reporting Individual's Name
CHRISTENSEN, JED D.

Page Number	4	Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE [XX]

		Identification of Assets	Type of Transaction (X)				Amount of Transaction (X)					
			Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	Over $250,000
or OC	Example	X Y Z Common	X			2/1/83			X			
1												
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only: Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude** transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), **exclude** gifts from relatives and **exclude** gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE [XX]

	Source (Name and Address)	Brief Description	Value
S			
Example	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/83	$500
Example	Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1			
2			
3			
4			
5			
6			

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SF 278 Rev. 1/90
FPM Chapter 735
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name:
CHRISTENSEN, JED D.

Page Number	5	Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE [XX]

	Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S DC	Example: First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
DC	John Jones, 123 J St. Washington, DC	Promissory note	1979	10%	on demand	X				
1										
2										
3										
4										
5										
6										

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefits plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE [XX]

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example:	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/78 partnership agmnt.

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SF ... (Rev. 1/88)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3206-0160

Reporting Individual's Name
CHRISTENSEN, JED D.

Page Number	6	Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE [X]

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/78	11/83

Part II
Compensation in Excess Of $5000
Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE [X]

	Source (Name and Address)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

461

United States of America
Office of Government Ethics

Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

OFFICIAL COMMITTEE FILE
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SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
JAN 06 1986
WASHINGTON D.C. 20510

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Jed D. Christensen, who has been nominated by President Reagan for the position of Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

We have reviewed the report and have also obtained advice from the Department of the Interior concerning any possible conflict in light of the Department's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Christensen is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin
Director

Enclosure

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 29 1986

Mr. David H. Martin
Director, Office of Government Ethics
Office of Personnel Management
P.O. Box 14108
Washington, D.C. 20044

Dear Mr. Martin:

The enclosed financial disclosure report filed by Mr. Jed D. Christensen for the position of Director, Office of Surface Mining Reclamation and Enforcement (Director, OSM) has been reviewed in compliance with 5 CFR 734.604(a). In addition to the standard conflict of interest prohibitions in 18 U.S.C. §§201-209, the Director, OSM is also subject to several prohibitions that apply only to employees in our Department. These additional prohibitions are 18 U.S.C. §437; 30 U.S.C. §6; 30 U.S.C. §1211(f); 43 U.S.C. §11 and 43 U.S.C. §31(a). Except for 30 U.S.C. §1211(f), the provisions of each of these statutes are extended to the Director, OSM by Department regulations in 43 CFR Part 20. The provisions of 30 U.S.C. §1211(f) apply directly to Federal employees, including the Director, OSM, U.S. Department of the Interior, who perform functions under the Surface Mining Control and Reclamation Act of 1977.

We have compared each reported interest to the provisions cited and we have determined that the information discloses no conflict of interest under the applicable statute and regulations.

Mr. and Mrs. Christensen do not personally manage the Individual Retirement Accounts (IRAs). The IRAs with E. F. Hutton consist of diversified investment portfolios in the Emerging Growth Series. Because of the diversity and independent management of the assets in the E. F. Hutton IRAs they are not prohibited by the applicable statutes and regulations. The IRAs with Washington Federal Savings and Loan consist of bank certificates of deposit.

Mrs. Christensen has a partnership interest in the S. Paul Stewart Enterprises partnership. This partnership manages farms and properties in Utah and Idaho. Some of the properties receive water service from a municipal water district that is supplied water by the U.S. Bureau of Reclamation. Because the Bureau of Reclamation does not provide the water service directly to the properties, there is very little chance that any particular matter involving water service to the partnership properties would ever come before the Department of the Interior. Even if such matters were to come before Interior, Mr. Christensen would not be involved in such matters as Director, OSM.

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Mr. Christensen is not a partner and provides no services to the S. Paul Stewart Enterprises partnership. His wife's partnership income is a distribution of profit based on her equity investment in the partnership. As explained, the partnership has no business with the Department of the Interior. Also since this is Mrs. Christensen's interest, the 15% limitation of 5 U.S.C. App. §210 on outside earned income, does not apply.

None of the reported real estate interests including the partnership interests involve any mining activities or any Federal lands administered by the Department of the Interior. The Putman Mutual Funds is a widely diversified mutual fund investment account. The E. F. Hutton Cash Reserve Fund is used as an interest bearing checking account. The Oppenheimer Money Funds consist of money market investments. All reported interests are acceptable under the applicable statutes and regulations.

Based on this analysis I have certified to the enclosed financial report filed by Mr Christensen on October 15, 1985.

Sincerely,

(Sgd) Gerald R Riso

Gerald R. Riso
Assistant Secretary
Policy, Budget and Administration
and Designated Agency Ethics Official

Enclosure

cc:
Mr. Christensen
Mr. Garrett, WH
Mr. G. Ellsworth, E&NR Committee
Mr. Hill, CL
Mr. Elliott, SOL/GL

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
MAR 04 1986
WASHINGTON D.C. 20510

The Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Pursuant to Section 201(b) of the Ethics in Government Act of 1978, as amended, I hereby certify and report that the information required by Section 202(a)(1)(A) with respect to earned income and honoraria, as set forth in my Financial Disclosure Report (SF-278) dated October 15, 1985, is current as of March 4, 1986. I further certify that I have transmitted copies of this report to the Office of Government Ethics.

Jed D. Christensen

County of Fairfax)
) ss
State of Virginia)

Subscribed and sworn before me on this 4th day of March, 1986.

Barbara Riedl
Notary Public

My commission expires: March 31, 1986

cc:
The Honorable J. Bennett Johnston

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APPENDIX II

Responses to Additional Committee Questions From Jed D. Christensen

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United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

MAR 14 1986

Honorable James A. McClure
Chairman, Committee on
Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are responses to the questions submitted for the record following my March 7, 1986, confirmation hearing for the position of Director of the Office of Surface Mining Reclamation and Enforcement.

Thank you for the opportunity to provide this material for the Committee's consideration.

Sincerely,

Jed D. Christensen

Acting Director

(51)

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QUESTIONS SUBMITTED BY SENATOR BUMPERS

Bumpers #1

Historic Preservation

Q. Let me commend you for your recent decision to approve the petition for rulemaking submitted by the Society of Professional Archeologists (SOPA). In their petition SOPA raised two basic issues. The petition stated that OSMRE's current regulatory program was not clear as to 1) how properties eligible for but not yet listed in the National Register of Historic Places are to be identified by applicants to conduct surface mining operations, and 2) what a State regulatory authority is to do when mining will have an impact on such a property.

When will draft rules addressing the issues raised by SOPA be proposed for public comment?

A. The proposed rules addressing the issues raised by SOPA were published in the Federal Register on March 11, 1986.

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Bumpers #2

Historic Preservation

Q. According to the Advisory Council on Historic Preservation, evidence of widespread historic property destruction has been accumulating, mostly from Appalachian and Midwestern States. For example, the Advisory Council estimated that about 55 sites eligible for inclusion on the National Register of Historic Places may have been mined away in Ohio last year, and approximately 204 such sites may have been destroyed in Kentucky.

In your view, what responsibilities does Section 106 of the National Historic Preservation Act impose on the Office of Surface Mining Reclamation and Enforcement (OSMRE) with respect to the issuance of permits by regulatory authorities in States with primacy, given the fact that OSMRE: (a) approves the programs; and (b) provides ongoing financial assistance to the State programs?

A. Although Section 106 of NHPA places no responsibility upon OSMRE for individual permitting decisions by a State, it does place an obligation upon OSMRE to consider the effect that the State permitting program will have on historic properties before approving or providing financial assistance to it.

In accepting financial assistance for its program from OSMRE, a State regulatory authority assures the Secretary that it will assist him in his compliance with Section 106 of the NHPA by consulting with the State Historic Preservation Officer on the identification of properties listed on or eligible for listing on the National Register of Historic Places. (This assurance is required for every Federal grant by the Office of Management and Budget Circular A-102, Attachment M.)

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Bumpers #3

Historic Preservation

Q. In testimony before the Public Lands Subcommittee of the House Committee on Interior and Insular Affairs in July 1985, you stated with respect to nistoric preservation requirements that:

> "It has become apparent that not all State regulatory authorities have had the same perception of what the Federal regulations and approved State programs require regarding historic preservation, or of the responsibility of the Secretary of the Interior under Section 106 in the approval and funding of State programs, OSMRE will require program modification in those States that do not believe their approved programs contain sufficient authority to implement. . . program requirements. . . ."

- What States were you referring to in your testimony?

  Concern had been expressed regarding historic preservation activities in the States of Kentucky, Ohio, Indiana, and Iowa.

- Has OSMRE required the modification of any of those State programs in order to implement program requirements with respect to historic preservation?

  The State of Kentucky had previously expressed concern that its regulations (which parallel OSMRE regulations) might provide authority to protect only sites listed on the National Register of Historic Places. However, Kentucky has subsequently provided the assurance to the Secretary required by OMB Circular A-102. OSMRE also worked with the other States to alleviate

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apparent problems. In August, the Ohio regulatory authority voluntarily passed an emergency rule clarifying that it had the authority to require operators to submit information in their permit applications on eligible as well as listed sites. This change resulted from OSMRE's discussion with Ohio concerning problems with the State's program. However, OSMRE has not notified Kentucky or any other State that it must modify the program at this time.

o When does OSMRE plan to require the modification of program requirements in these States?

After final regulations are promulgated pursuant to the proposal published on March 11, 1986, States will be notified, pursuant to 30 CFR 732.17(d), of any required changes to individual State programs.

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Bumpers #4

Historic Preservation

Q. Is it the Department's position that cultural resource field surveys are not required prior to permit issuance by State authorities in primacy States receiving Federal funding, even in instances where such surveys are recommended by the State Historic Preservation Officer?

o Please explain.

A. The determination of whether cultural resource field surveys are required is properly made on a case-by-case basis by the State regulatory authority. The regulatory authority can, when appropriate, require surveys to identify and evaluate important historic resources and archeological sites that may be eligible for listing on the National Register of Historic Places. In making that decision, the regulatory authority should consider the recommendation of the State Historic Preservation Officer.

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Bumpers #5

Historic Preservation

Q. In your testimony before the Public Lands Subcommittee of the House Committee on Interior and Insular Affairs last July, you indicated that OSMRE intends to develop proposed rules to clarify its existing historic preservation provisions. What is the status of these proposed rules?

- Please describe OSMRE's time frame for these rules.

A. The proposed rules were published in the Federal Register on March 11, 1986. A 90-day comment period follows. OSMRE expects to move expeditiously toward finalizing the rules at the end of the comment period.

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Bumpers #6

Historic Preservation

Q. The National Historic Preservation Act requires that each Federal agency designate a qualified official to be its preservation officer. In response to a question posed by the House Public Lands Subcommittee last summer, you indicated that OSMRE's designated Historic Preservation Officer had been reassigned to other duties, and that you would select a new preservation officer in the "near future."

- o Have you selected a new Historic Preservation Officer?

A. Dr. Annetta Cheek has been designated as OSMRE's new Historic Preservation Officer.

- o If so, to whom does he or she report?

A. She reports to Dr. Mark Boster, Chief of the Division of Permit and Environmental Analysis, Office of Program Operations.

- o What are his or her qualifications?

A. Dr. Cheek has a solid background in the archeological and historic preservation area. Her qualifications include the following: A Ph.D. degree from the University of Arizona in anthropology with an emphasis on archeology; currently serves as an officer in the Society for American Archaeology; and experience with the Departmental Consulting Archaeologist, National Park Service, providing technical assistance to

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Federal agencies on archeological law, requirements, and professional issues. She also has experience in the private sector providing contractor archeological services to Federal agencies and with the Oklahoma State Historic Preservation Office conducting historic preservation surveys.

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QUESTIONS SUBMITTED BY SENATOR WALLOP

Wallop #1

Q. Mr. Christensen. On February 7, I wrote to you concerning a subsidence problem in the city of Rock Springs, Wyoming. Are you familiar with this letter, and when can I expect a response?

A. I responded to your letter on March 10, 1986, and am attaching a copy.

Q. The Wyoming State Legislature is presently working on a bill to form a subsidence insurance program, which will have an impact on the present situation in Rock Springs. In the meantime, however, I'd like to clarify a couple of points with you so I can respond to my constituents. First, I realize that a correlation has to be made between any alleged damages to private homes and on-going abandoned mine land projects -- in this case, it was a back-fill project. Are you aware if any correlation has been made with the Rock Springs Project?

A. The State of Wyoming has sponsored two independent engineering studies of the damage at the Rock Springs project. The State has indicated that it will be formally submitting these studies to our Casper Field Office in the near future.

Q. Second, as the Administration's nominee for Director of OSM, how would you advise the 21 homeowners to seek assistance in repairing damages if a direct correlation is made?

A. Since the approval of Wyoming's Abandoned Mine Land (AML) program on February 14, 1983, the State has been the administering agency for AML projects. Accordingly, if a direct correlation is made, any adversely affected homeowners should submit claims to the Wyoming Department of Environmental Quality (DEQ), Division of Land Quality. The DEQ would process the claims and may make a grant request to OSMRE for funds to cover damage to the homes.

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Q. Third, has your office in Wyoming been following this case, and if so, what has been the extent of its involvement?

A. The Casper Field Office has been following the project since its inception. The Field Office processed the original grant application and a subsequent amendment. It evaluated the eligibility and merits of the project and recommended approvals to OSMRE Headquarters. The Field Office has been in contact with the State and will process an additional grant request for Rock Springs.

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United States Department of the Interior
OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

MAR 10 1986

Honorable Malcolm Wallop
United States Senate
Washington, D.C. 20510

Dear Senator Wallop:

Thank you for your letter of February 7, 1986, on behalf of Mrs. Mary Rynio, Chairman of the Rock Springs Homeowners Committee on Backfill, regarding the Wyoming Abandoned Mine Land subsidence reclamation project in Rock Springs, Wyoming.

The Office of Surface Mining Reclamation and Enforcement (OSMRE) is responsible for administration of the Abandoned Mine Reclamation (AMR) program under the Surface Mining Control and Reclamation Act (SMCRA). Grants provided under the AMR program are available to States to undertake projects under an approved AMR plan. The Department of Environmental Quality (DEQ) is the State agency responsible for administration of the AMR program in Wyoming. As such, DEQ is responsible for the preparation and submission of grant applications to OSMRE, development of project specifications and plans, and award and administration of project construction contracts.

Funds amounting to $10,112,299 have been approved in the grant to DEQ to undertake the Rock Springs project. The grant agreement does not provide for expenditure of funds to repair structures impacted by naturally occurring subsidence events because SMCRA does not authorize use of AMR funds for this purpose. However, it does provide for the payment of claims where a direct causal relationship can be established between structural damage and backfilling activities approved under the grant agreement.

DEQ has commissioned two independent technical studies to determine if subsidence occurring so far was initiated by the backfilling operations or by other possible causes. If it is determined that the backfilling operations caused the subsidence which resulted in damage to the structures, the State may reimburse the affected homeowners for repair costs.

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OSMRE's participation in the administration of the AMR program in Wyoming consists of processing grant applications from the State, providing technical assistance, and conducting general project oversight. Claims concerning contractor grievances or from citizens who allege damage from project operations should be submitted to DEQ. While OSMRE monitors this activity, it has no direct involvement.

If we may be of any further assistance concerning this matter, please let us know.

Sincerely,

(sgd) JED CHRISTENSEN

Acting Director

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JAMES A. McCLURE, IDAHO, CHAIRMAN
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GARY G. ELLSWORTH, CHIEF COUNSEL
D. MICHAEL HARVEY, CHIEF COUNSEL FOR THE MINORITY

United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510

February 7, 1986

Mr. Jed A. Christensen
Acting Director
Office of Surface Mining
Reclamation and Enforcement
Department of Interior
Washington, D.C. 20240

Dear Mr. Christensen:

I have been contacted by a constituent, Mrs. Mary Rynio, who is serving as the Chairman of the Rock Springs Homeowners Committee on Backfill concerning a very severe subsidence problem in the city of Rock Springs, Wyoming which has damaged at least twenty-one residences as a result of a backfill project.

In order to help her continue her investigations as to how these residents can receive some type of compensation, I would like some clarification from your office. First, Mrs. Rynio is under the impression that $8 million was reserved for the program, but has been informed by the Wyoming Department of Environmental Quality that none of the current project funds can be used to reimburse homeowners for damages resulting from the project. I would appreciate it if you would clarify this interpretation and provide my office with a status report on what type of OSM funds are available, if any, and what steps your Wyoming field office has taken as far as its participation in the resolution of the entire problem. Second, I would like to know, what in your view the Office of Surface Mining can do, if and when claims are filed, to make this process as efficient as possible for all those affected. Third, I think it would be helpful to outline OSM procedures in cases such as this one for the residents involved.

I appreciate your time and attention to this matter of concern to my state, and look forward to a timely response from your office.

Sincerely,

Malcolm Wallop

Malcolm Wallop
United States Senator

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Wallop #2

Q. The Governor of Wyoming is very interested in pursuing funding provided by the Secretarial Abandoned Mine Land discretionary fund to finance the Reclamation of several abandoned coal mine sites in Wyoming. In your opinion, is this an appropriate way for the Governor to proceed in acquiring funds to finance Reclamation work in Wyoming?

A. The State may seek funding of these abandoned coal sites with State-share monies.

Section 409(c) of SMCRA requires that all reclamation with respect to abandoned coal lands and coal development impacts be met before a State can use AML funds for non-coal projects which do not relate to public health and safety. (The only non-coal projects that can be funded before all coal related projects are completed are those that are requested by the Governor and relate to the protection of public health and safety.) The State certified that there were no known coal-related impacts left to be reclaimed and on May 25, 1984, OSMRE agreed that the requirements of Section 409(c) had been satisfied and that the State could proceed to expend State-share funds on non-coal projects. Section 409(b) limits the funding of non-coal projects to State-share monies; Secretarial share monies cannot be used to fund any non-coal projects.

Since the State has used AML funds for reclamation of non-coal projects which do not relate to public health and safety and continues to seek AML funds for such projects, any newly discovered coal abandoned sites are appropriately funded with State-share AML monies.

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Q. What is the status of the State of Wyoming's construction grant application for projects 6C and 7B in Carbon and Sweetwater Counties which the State requested be from Wyoming's share of these secretarial monies? The State had requested this application be approved by April 1.

A. Wyoming's grant request for both projects was approved by OSMRE on February 18, 1986. The Casper Field Office forwarded the approval documents to the State on February 27. The projects are being funded with State-share monies.

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QUESTIONS SUBMITTED BY SENATOR WARNER

Warner #1

Two-Acre

Q. Please provide for the record the Office of Surface Mining's most recent statistics on the number of two-acre operations on a State-by-State basis.

A. Pursuant to the settlement agreement to Save Our Cumberland Mountains, v. Hodel, OSMRE compiled inventories of two-acre sites in Kentucky, Virginia, and Tennessee, the only States where the two-acre exemption has been identified as a problem.

The Kentucky inventory currently contains 2,495 sites; Virginia, 1,518 sites; and Tennessee, 112. The inventory includes both active and inactive sites.

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QUESTIONS SUBMITTED BY SENATOR FORD

Ford #1

Rural Abandoned Mine Program ("RAMP")

Q. Why do you propose to abolish the Rural Abandoned Mine Program ("RAMP") despite statutory language authorizing its existence and strong congressional support?

A. We are not asking to have the RAMP abolished, but in FY 1987 have not sought funding for the program. We believe that the purposes of RAMP can effectively be served by incorporating RAMP type projects into ongoing State AML programs, thus reducing the cost of overhead and separate program operation. Projects for the control and prevention of erosion and sediment damage from unreclaimed mine lands can be funded under the auspices of the individual State AML program. State AML personnel can work with State or local soil conservation services to accomplish such projects.

Ford #2

Rural Abandoned Mine Program ("RAMP")

Q. Funding for the RAMP comes from the Abandoned Mine Land ("AML") Fund. It is my understanding that the AML Fund will contain a balance of over $400 million in unappropriated monies at the end of Fiscal Year 1986. Why don't you think that a portion of these AML funds should be used to continue the RAMP?

A. As explained in the answer to the preceding question, we do not believe that the RAMP type projects need to be administered as a separate program. The proposed level of appropriations contained in our FY 1987 budget is sufficient to fund priority type RAMP projects as part of the overall AML program.

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Ford #1

Agency Management

Q. How much has OSMRE (or the United States) paid out to date in attorneys' fees under the attorney fee provision of the Surface Mining Control and Reclamation Act ("SMCRA")?

A. The United States has paid out about $299,777 in attorneys' fees under the Surface Mining Act.

Ford #2

Agency Management

Q. Can parties in litigation under SMCRA also collect attorneys' fees under the Equal Access to Justice Act?

- o If so, how much has OSMRE (or the United States) paid out to date in attorneys' fees under the Equal Access to Justice Act in litigation arising under SMCRA?

A. Under the circumstances, attorneys' fees may be recovered under EAJA as an alternative to recovery under SMCRA. To date the Department has paid out about $124,050 for attorneys' fees under EAJA.

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QUESTIONS SUBMITTED BY SENATOR JOHNSTO.

Johnston #1

Two-Acre Exemption

Q. I understand that according to a recent inventory, over 4,000 mine sites have claimed the two-acre exemption. I also understand that in Virginia alone, according to preliminary Mine Health and Safety Administration figures, over 45 percent of total coal production for substantial periods occurred at mines claiming the two-acre exemption.

- o Do you think Congress should repeal the two-acre exemption?
- o Why or why not?

A. It is clear that there has been serious and continuing misuse of the two-acre exemption.

Chairman Yates of the House Interior Appropriations Subcommittee asked at last year's budget hearing that the Department's Solicitor draft legislative language deleting the two-acre exemption from SMCRA, language which was provided to him previously. The Department is not yet prepared to request or recommend that the two-acre exemption be removed from SMCRA, although the Department has given and continues to give careful consideration to making such a recommendation. I look forward to working with this Committee in addressing this issue.

In the process of considering this option, the Secretary and I have been in contact with all interested groups and members of the House and Senate. We are reluctant to recommend

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an amendment to the Act that may result in opening the Act to multiple amendments. However, we have begun working with coal mining States to eliminate two-acre exemptions from State programs.

In regard to the Virginia statistics referred to in the question, we have done an analysis of the MSHA data from Virginia for 1983 and 84. The results of this analysis are attached; they show two-acre production to be much less than 45%. We are querying the State for 1985 production data as well as validation of the 1983 and 84 figures.

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VIRGINIA TONNAGE REPORT

The Virginia Tonnage Report was prepared by the District Office of MSHA at Norton, VA. The staff there used the OSM 2-acre inventory and entered tonnage figures based on the MSHA HSAC report for the appropriate years.

The OSM list is in a raw form and contains permittees, operators, and others ever claiming 2-acre exemption and has not been reduced as of this date. The MSHA staff matched MSHA ID numbers with the HSAC report to produce the list. It was discovered that because of this method duplications existed. Further analysis revealed 108 duplicate entries. Further analysis revealed that 20 operations listed were in excess of 2-acres. The grand totals on the report, therefore, overstate 2-acre production by over 12 million tons for the three years.

The list was checked for type of production and 20 operations were identified as surface under 2 acres. The remainder of the list represents deep-mine production. One exception is Consolidation Coal Co., which evidently reports under one MSHA number for all production, which originates from both surface and underground.

The following summary shows the adjusted 2-acre production by source, the total production as reported by the Department of Mines, Minerals and Energy, and the percentage of 2-acre production related to total coal production.

In 1984, Virginia agreed to adopt the Federal standard for determining what comprised a mine site. This change will result in far fewer sites qualifying as less that 2 acres in 1985 and beyond.

	1984	1983
Grand Total MSHA List	18,610,759	16,584,129
Grand Total Through 2-Acre	1,330,345	1,876,477
Duplicates	3,536,150	3,543,795
Surface	865,257	907,152
Consolidation	118,626	16,442
Net Deep Mines	12,760,331	10,240,263
Surface Mines	865,257	907,152
Consol - S/D	118,626	16,442
Total 2-Acre Production	13,744,264	11,163,857
Total Production		
Underground	34,115,482	27,939,664
Surface	7,309,271	7,577,392
Total Production	41,424,753	35,517,056
% 2-A Deep - Total	30.80	28.83
% 2-A Surf - Total	2.09	2.55
% 2-A Mix - Total	0.29	0.05
% 2-A Tot - Total	33.18	31.43

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Johnston #1

Civil Penalty Collections

Q. Of the total sum of outstanding civil penalties, what amount do you consider to be uncollectable?

A. We have now identified $156.4 million as the amount of unpaid civil penalties that have been assessed since 1978. Of this amount we estimate that as much as 80 percent may be uncollectable due to the companies or individuals having gone out of business or into bankruptcy, died, or disappeared. However, this debt is being turned over to professional collection agents to attempt recovery. If they are unable to collect it, the names of the companies or individuals will be placed in the Applicant Violator System so that any future mining permit application by any of these companies or individuals would be blocked.

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Johnston #2

Two-Acre Exemption

Q. Is the Office of Surface Mining Reclamation and Enforcement ("OSMRE") phasing down two-acre enforcement activities.

o If so, where and why?

A. No, we are continuing to emphasize our two-acre program. OSMRE task forces have been established to curb abuse of the two-acre exemptions in Kentucky and Virginia, the two States where much of the abuse has occurred. These task forces consists of 21 and 11 persons, respectively.

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Johnston #1

Abandoned Mine Land ("AML") Fee Collections

Q. Collections of Abandoned Mine Land fees has been a serious problem for OSMRE. Last July you testified before the House Committee on Government Operations. At that time, you stated that OSMRE was developing an automated system for identifying and linking principals and major stockholders appearing in multiple coal operations, and that you expected the system to be operational by October 1, 1985.

- Did OSMRE meet this deadline? Why or why not?
- How does this automated system fit in with the Applicant/Violator System? Is it a part of the AVS?
- What steps are you taking to make certain that OSMRE is not setting up duplicative automated data processing systems?

A. The system described in my testimony last July before the House Committee on Government Operations was an interim system limited to data associated with delinquent AML fees. It was decided to incorporate this interim system into the permanent Applicant Violator System now under development. When the AVS is operational, data on delinquent AML fees will be included in the system and will be used as a basis for permit blocking.

By incorporating this interim AML system into the AVS duplication of effort and maintenance of overlapping systems was avoided.

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Johnston #2

Abandoned Mine Land ("AML") Fee Collections

Q. What steps have you taken since becoming Acting Director of OSMRE to ensure that AML fees are collected in accordance with the requirements of SMCRA?

A. OSMRE has implemented an aggressive audit program to assure that all AML fees owed are collected. As a result of this program over $11 million in additional delinquent fees have been collected since my tenure as Acting Director began. We are also utilizing the IRS offset program where funds owed the Government are offset against income tax refunds.

Also to ensure that OSMRE auditors focus their efforts where their time can be best utilized, audit priorities have been established. Data also obtained from a variety of sources and checked against data reported to OSMRE to assure that fees are being paid on all production subject to the fee. For example, OSMRE data is now being crosschecked against data obtained from the Energy Information Administration of DOE. Further, all OSMRE fee compliance auditors are now spending full time auditing and are organized as an independent unit under central management giving emphasis to our audit program as a specially focused audit activity.

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Johnston #1

Evaluation and Oversight of State Programs

Q. In response to questions relating to the proposed Fiscal Year 1987 budget, the Department recently stated that the "current level of funding has proved effective in identifying and addressing problems" in the evaluation and oversight of state programs by OSMRE. Many observers would disagree. For example, the National Wildlife Federation, in its October 1985 report, "Failed Oversight," states, "In almost every major coal state, OSMRE is aware of significant violators of the law and has failed to stop them."

- o Upon what do you base your conclusion that the current level of funding has been "effective" in addressing problems in oversight of State programs?

A. The problems which we identify in oversight are being resolved or substantial progress is being made from year to year. For example, States which were not meeting the inspection frequency requirements have shown good progress--Pennsylvania, for instance, achieved inspection frequency requirements on only 60 percent of mine sites in the 1984 reporting year; in 1985, it improved to 85 percent.

In addition, the nature of the problems we observe is changing from failure to meet standards on the ground at the mine site to technical deficiencies or procedural errors. In other words, on-the-ground compliance is improving. Based on OSMRE's statistical sampling, data for the 12 months ending June 30, 1985, show that 83 percent of mines nationwide were in compliance with over 90 percent of the performance standards established by SMCRA.

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Johnston #2

Evaluation and Oversight of State Programs

Q. What steps are you taking to ensure that OSMRE's recently-drafted permitting oversight guidelines and procedures for overview of state programs are being uniformly implemented and applied?

- o Could you please provide me with a copy of these guidelines?

A. On November 27, 1985, OSMRE distributed to all of its Field Offices an interim final version of the procedures for conducting oversight reviews of State permitting operations. The memorandum distributing the document directed staff to implement these procedures pending finalization of the guidance document. The final version, which was distributed on February 25, 1986, is substantially the same as the interim final version. It incorporates revisions which were made to address comments and recommendations of the Field Offices and Technical Centers on the interim final version. Thus, the procedures have been communicated and in effect for the major part of the FY 86 oversight period, which runs from July 1, 1985, through June 30, 1986.

Only minor adjustments were needed to enable the Technical Centers to comply with the new procedures as drafts of the guidance document were available to Technical Center staff at the time of the earliest reviews.

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As permitting oversight evaluations are completed, they are being reviewed by headquarters staff for consistency and to evaluate the effectiveness of the guidelines. Workshops involving the review staff will be held over the next few months to evaluate the guidelines effectiveness and the consistency of their application as a part of developing the 1987 guidance.

A copy of OSMRE's guidelines entitled "Procedures for the Evaluation of State Permitting Operations" is attached.

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PROCEDURES FOR THE EVALUATION OF STATE PERMITTING OPERATIONS

I. Purpose: This document sets forth the procedures to be utilized by OSM staff in evaluating surface coal mining permitting operations in States with approved regulatory programs under the Surface Mining Control and Reclamation Act (SMCRA) and includes guidelines for preparing written findings following an evaluation.

II. Overview: The evaluation of a State's permitting operations is completed in three phases:

Phase I

The first phase is the planning and preparation phase. It is conducted by an Advance Team and entails the following:

- identification of permitting program areas to be evaluated in current year;
- selection of sample State permitting actions to be the subject of the administrative completeness review and the technical review;
- development or updating of existing administrative completeness checklists;
- identification of staff expertise required for evaluation;
- scheduling the evaluation;
- meeting with the State regulatory authority (SRA) to discuss the permitting evaluation procedures, topics and schedule and to obtain input from the State with regard to each of these;
- adjustment of the schedule or evaluation topics to reflect State input; and
- orientation of the Evaluation Team.

Phase II

The second phase is the actual evaluation of the State's permitting operation conducted by an Evaluation Team. It includes the following:

- review of selected permit documents to determine whether they are administratively complete (i.e., whether the applicant has submitted all required information);
- review of selected State permitting actions and related documents to evaluate the technical adequacy of the SRA's permitting decisions (i.e., the SRA's compliance with State program permitting requirements);

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- selection of permit sites for field evaluation;

- field evaluation of sample permit sites to (i) examine practices which appear to be problematic based on OSM's review of the applicant's permit; (ii) to examine State or site specific mining practices or situations necessary to the understanding of the permitting practices of the SRA;

- meeting with the State to discuss preliminary findings of the Evaluation Team.

Phase III

The third phase includes the following activities:

- preparation of written findings by the Evaluation Team;

- consultation between the Field Office and the Evaluation Team regarding the written findings;

- review of the written findings by the AD for Field Operations;

- a meeting with the State to convey the Evaluation Team's findings and obtain State input on those findings; and

- revision of the written findings by the Evaluation Team as appropriate to reflect State input.

III. Procedures for Phase I

A. Advance Team Composition:

The advance team will be comprised of staff from the Technical Center (TC) and may include Field Office (FO) staff. The team leader will be appointed by TC management and selected from the TC staff.

B. Identification of Permitting Program Areas to be Evaluated in Current Year:

The first action of the Advance Team is the identification of permitting program areas to be reviewed in the current evaluation year. Not all program areas will be reviewed each year.

The Advance Team should consider the following in determining which areas will be reviewed:

o National objectives. Headquarters will select technical or program areas for review nationwide (see discussion below).

o Previous oversight experience may support cursory or no review in some areas or emphasis on other areas.

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- o OSM or State inspections may show compliance problems related to permitting.
- o OSM's Federal Lands permitting actions may give rise to oversight permitting questions.
- o States may suggest areas for review.
- o Based on FOD's contact, outside interest groups may suggest areas of permitting program to be evaluated.
- o FOD's may request reviews of specific permitting actions.
- o Reclamation or environmental problems in mining may necessitate review of particular permitting actions.
- o Mining practices or conditions which are unique in a given State or at a given site may be likely evaluation topics.

The Advance Team may select as many as ten permitting evaluation topics in addition to those selected as national objectives. Review of national objective topics is mandatory.

After consideration of the factors listed above, the Team should select the evaluation topics on the basis of the following:

i) the critical nature of a topic in terms of the environmental consequences; and

ii) the number of indicators supporting review of a given area.

Appendix A includes a partial listing of permitting program areas which may be selected as evaluation topics.

The Field Office Director, with the concurrence of the TC Administrator, will make the final selection of permitting evaluation topics, based on the recommendations of the Advance Team.

National Objectives

The National Objective evaluation topics will be areas of concern nationwide. No more than three areas will be selected for evaluation as national objectives in any given year. Nominations for subject areas to be included as National Objectives will be made by the Field Offices, Technical Centers, and Headquarters based upon their knowledge of concerns that have potential significance nationwide.

The final selection will be made by the Deputy Director of Operations and Technical Services with the concurrence of the Director.

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C. Selection of Sample Permitting Actions to be Evaluated:

The Advance Team will select a sample of State permitting actions to be used for the evaluation. Permitting actions include approvals of new permits, repermits, permit revisions, permit renewals, permit reassignments, and exploration notices on permits. The size of the sample selected should be not more than 50 percent and not less than 10 percent of the new permitting actions taken by the State during the review period. The percentage of new permitting actions evaluated should be the greatest in States with few new permitting actions and the smallest in States with a large number of new permitting actions.

The number of each type of permitting action selected for inclusion in the sample to be used for the administrative completeness review should be representative of the SRA's activity in each category during the review period. For example, if the review of new permits was the SRA's major activity during the review period and other permitting actions were incidental, then the administrative completeness review sample should consist primarily of new permits.

The sample permitting actions will not be reviewed in their entirety but only in those areas which have been selected for evaluation in the current year.

Generally, the review sample will be the same for both the administrative completeness review and the technical review (discussed below). However, the Advance Team may select separate samples for the two reviews if necessary to fulfill specific technical review needs.

D. Development or Updating of Administrative Completeness Checklists:

The Evaluation Team will examine the sample of permitting documents selected by the Advance Team to make an assessment of the administrative completeness of the information contained in the applications approved by the SRA. For the purpose of this review the Advance Team will develop or update existing checklists based on the application content requirements of the individual State Program.

Development of these checklists should be completed by the Advance Team prior to the Evaluation Team's review.

Each checklist should itemize the major required components of an application as specified in the State program. For example, a checklist for a mining permit application would detail the State program requirements for the following:

- legal, financial, compliance information;

- environmental resources information;

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- operation plan information;

- reclamation plan information.

A separate checklist must be developed or updated by the Team for each type of application included in the sample, e.g.,

- mining permit applications;

- coal exploration permit applications;

- permit modification applications;

- permit renewal applications, etc.

Once developed, these checklists can be utilized for subsequent evaluations, with appropriate updating to reflect program, policy and procedural changes made by the SRA.

E. Selection of Evaluation Team Members:

The Advance Team will identify the size and makeup of the Evaluation Team. The size of the team will be determined by the number of permitting actions in the State, the number of subjects to be reviewed, and the complexity of these subjects. Generally, the team will consist of two to five members in addition to the team leader. The makeup of the team will be determined by the areas selected for technical evaluation in the review. The team members will be selected by the TC management after consultation with the FO.

F. Evaluation Schedule:

The Advance Team will establish a proposed schedule for the evaluation after considering the following factors:

- annual evaluation report deadlines by Headquarters;

- availability of professional personnel with appropriate disciplines needed to conduct the evaluation;

- availability of State personnel for coordination with OSM during the evaluation process and for closeout and findings conveyance meetings;

- the appropriate times of year to conduct field evaluations;

The following events should be included in the schedule:

- advance team meetings;

- evaluation team review at SRA;

- field evaluations;

- closeout meeting with the State to discuss OSM's preliminary findings;

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- final preparation of written evaluation findings;

- submission of written findings to FOD;

- submission of written findings to the AD for Field Operations;

- findings conveyance meeting with the State.

The scheduled date for submission of written findings to the FOD will be included in the Management by Objectives tracking list.

The proposed schedule developed by the Advance Team will be submitted to the FOD and TC Administrator for approval.

G. Advance Team Meeting with State Regulatory Authority (SRA):

The Advance Team will meet with the SRA for the following purposes:

- to inform the SRA of the procedures to be utilized by OSM in evaluating its permitting operations;

- to inform the SRA of the evaluation topics (including the national objectives topics) which have been selected for the current year and to seek the State's input with respect to these topics;

- to establish a schedule for the following:

    - o Evaluation Team review;
    - o field evaluations
    - o closeout meeting
    - o findings conveyance meeting

- to request that the SRA make available to OSM all permitting documents that will be needed by the Evaluation Team during the course of the review;

- to arrange for the SRA to make available to OSM liaison personnel to assist the Evaluation Team during its review and to accompany OSM during field evaluations.

Following the meeting with the SRA, the Advance Team will make adjustments as appropriate in the evaluation topics or evaluation schedule to reflect the State's input.

The meeting with the SRA may be eliminated if the Advance Team can establish the permitting evaluation schedule and make all other necessary arrangements with the SRA over the telephone or through some other means.

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H. Procedures for Evaluation Team Orientation:

At the conclusion of the Advance Team planning for the State's permitting evaluation, the Advance Team Leader will conduct an orientation for the Evaluation Team to explain the plan for conducting the annual State permitting evaluation. The orientation will at a minimum cover the following subjects:

- permitting evaluation topics and the rationale for selecting each;
- sample of permitting actions selected for evaluation and the basis for the selection;
- procedures for conducting administrative completeness review;
- procedures for conducting technical review;
- procedures for conducting field evaluations;
- guidance for selection and development of issues for incorporation in the written findings;
- outline for written findings (Appendix C);
- procedures for conducting closeout meeting with the SRA.

IV. Procedures for Phase II

A. General:

Phase II is the actual evaluation of the State's permitting program by the Evaluation Team. The review of State permitting operations will be conducted at the SRA's office at the scheduled time. The Team will coordinate with State personnel to obtain all documents necessary for the review and for clarification on State policies, procedures or actions.

The evaluation will be conducted in three phases: the administrative completeness review (ACR), the technical review and the field evaluations. Each phase is described in detail below.

B. Administrative Completeness Review:

The Evaluation Team will examine the sample of permitting documents selected by the Advance Team to make an assessment of the administrative completeness of the information contained in the applications approved by the SRA. For the purpose of this review the Evaluation Team will use the checklists developed by the Advance Team based on the application content requirements of the individual State Program.

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The Evaluation Team will review the applications included in the sample selected by the Advance Team against these checklists and document which information requirements have been satisfied by the applicants and which have not. If a reviewer determines that a requirement has not been satisfied, he/she will document whether the information was incomplete, inadequate or not present. The ACR review should not be an assessment of the technical adequacy of the application information but merely a determination of the completeness of the information in an administrative sense.

C. Technical Review:

The Evaluation Team will examine the permitting documents contained in the sample to determine whether the SRA had a reasonable basis for its decisions and actions on the applications included in the sample. In making a determination as to the adequacy of the SRA's decisions, the Evaluation Team will review in depth all components of each permit file. The Team will not review these documents in their entirety, but rather those sections of each document relevant to the evaluation topics selected by the Advance Team for the current year (e.g., prime farmland, topsoil, etc.).

The reviewer will examine all sections of any document which relate to the given technical discipline or evaluation topic. In the case of permit applications, the reviewer will examine relevant sections of the following:

- baseline data;
- reclamation plan;
- operations plan;
- requests for variances;
- requests for exemptions;
- proposals for experimental practices;
- public and agency comments;
- the SRA's findings and permit conditions and supporting documentation for findings;
- any revisions to the permit approved by the SRA;
- any other relevant documentation.

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b) Technical Review

- For each subject area of permitting or bond setting selected for review by the Advance Team for in-depth technical review, and those permitting or bond setting areas chosen as OSM National Objectives:

  identify the subject area of permitting or bond setting evaluated and the program standards relevant to the area;

  provide detailed information to support the significant findings;

  analyze and make a judgment as to whether identified deficiencies are occurring because:

  1) the State is failing to properly implement approved program policies, provisions or procedures; or

  2) the approved program provisions are defective (i.e., although the State is implementing the approved provisions or procedures, the requirements of SMCRA and the Federal regulations are not being met);

  explain effects of deficiencies on implementation or operation of the State Program;

  explain effects of deficiencies on other phases of the program;

  identify actions needed to correct deficiencies;

  identify achievements in the State's permitting or bond setting programs.

c) Field Evaluation

The field evaluation purpose and scope should be described, together with a rationale for the description of the sample selected. The findings should focus on the permitted operation achieving the purposes of the State program and the Act as they relate to environmental standards, deficiencies, enforcement history, and reclamation.

- Report on the findings of field evaluation.

- Report on follow-up review of sites examined in previous years. The elements and focus of the review should be specified with an emphasis on whether the permit as implemented has achieved the purposes of the Act, whether deficiencies previously noted have been corrected.

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5. Permitting and Bond Setting Implementation Issues

[Instructions: Describe each major permitting and bond setting implementation issue which has not yet been resolved. Discuss the probable cause of each problem. Indicate actions which have been taken by OSM and the State to bring about resolution of the problem and specify the proposed action plan and timetable for final resolution of the problem. Provide this information under appropriate headings as shown below.]

Issue: (Include cross-reference to problem description discussion in body of report.)

Probable Cause:

Actions Taken to Resolve Problem:

OSM:

State:

Action Plan/
Timetable Plan
Final Resolution:

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The evaluation criteria will be the State program requirements relevant to each technical discipline or evaluation topic. The reviewer will determine whether the SRA had a reasonable basis for determining that the application information which relates to the given technical area is complete, and fully satisfies the pertinent program requirements. For each permit, permit revision or other permit document evaluated the Evaluation Team will make a record of the following:

- permit or document number;
- applicable regulations used as evaluation criteria;
- completeness and adequacy of applicant's proposal in each area being evaluated;
- technical adequacy of SRA's decision. (Did the SRA have a reasonable basis for its decision? Were all comments addressed? Did the SRA coordinate with other agencies as required? Did the SRA document its findings and the basis for its decision?).
- description of deficiencies identified;
- human health and environmental consesquences of deficiencies;
- need for corrective action specific to permits reviewed.

Appendix B is a suggested presentation for the summary technical review findings.

D. Selection of Sample Permit Sites for Field Evaluation:

Field evaluations will be conducted in each State as part of the permitting evaluation.

The Evaluation Team will select a sample of permit sites for field evaluation from the current permitting evaluation sample. A minimum of two permits or 20 percent, whichever is larger, of the current sample will be selected. In addition, the Advance Team may select permit sites from the previous year's sample to be evaluated in the field.

E. Field Evaluations:

The Evaluation Team will conduct field evaluations. The Team will focus its evaluation on those aspects of an operation that pertain to the evaluation topics for the year (including the national objective evaluation topics).

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The purpose of field evaluations is not to inspect sites to assess the operator's compliance with the approved permit.

The purposes of the field evaluations are as follows:

i) to obtain on ground verification of the findings developed by the Team in its "desk" review of the permit file;

ii) to identify any problems not surfaced through the Team's desk review of the permit file;

iii) to familiarize OSM with State or site specific conditions or practices (e.g., alluvial valley floors).

The evaluation Team may also conduct field evaluations of sites included in the permit review sample from the previous year in order to assess the extent to which permitting problems previously identified have been remedied.

The Evaluation Team should fully document its findings after each field evaluation.

E. Closeout Meeting:

A closeout meeting with the SRA will be conducted by the Evaluation Team to discuss the Team's preliminary findings on the State's permitting operations.

In preparation for this meeting each team member will prepare a preliminary summary of findings. During the meeting the SRA will be encouraged to provide any additional information or clarification of its actions that might have a bearing on OSM's findings.

V. Procedures for Phase III

A. The Written Findings

Following the review of State permitting operations the Evaluation Team members shall prepare written findings.

Each team member is responsible for preparing a draft document and summary paragraph covering his/her assigned evaluation areas. In preparing these findings the team members should take into consideration any material submitted by the State during the closeout meeting which has a bearing on the reviewer's findings. The draft document will be transmitted through the team members' respective Branch Chiefs and Division Chiefs to the Evaluation Team Leader in accordance with a predetermined schedule set by the Advance Team Leader.

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The Evaluation Team leader will compile a single findings document using the draft findings prepared by the individual team members. The document will be prepared in accordance with Appendix C (Written Findings Format) and the relevant sections of the format and outline for the FOD's annual report to Congress on a State's AML and regulatory programs.

The completed initial draft of the findings document will be distributed to all the team members for their critical review and comments. When the team leader is satisfied that the findings document accurately reflects the issues and accomplishments of the State, a copy of the findings document will be submitted to the TC senior staff and management for review. Following the TC Administrator's approval, the document shall be submitted for review to the Field Office Director. The FOD will provide the Evaluation Team leader with comments on the draft findings document. After the FOD has had an opportunity to review and comment on the findings document, it will be submitted to the AD for Field Operations. Any issues concerning the findings document not resolved by the TC Administrator and FOD will be resolved by the AD for Field Operations. After reviewing the AD's comments, the team leader will make appropriate changes to the findings document and provide copies to the TC Administrator and FOD for final comment.

B. Findings Conveyance Meeting:

The FOD and the Evaluation Team leader with support from appropriate technical center staff will conduct a meeting with the State to present OSM's findings on the State's permitting operations. Prior to the meeting, the State will be provided with those materials that are necessary to an understanding of permitting issues to be discussed during the meeting. Each issue shall be discussed in detail with the SRA. The SRA will be given the opportunity to present any information which has a bearing on OSM's findings. Following the meeting with the State, the Evaluation Team leader will make modifications to the written findings document as appropriate to reflect State input.

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APPENDIX A

Permitting Program Areas Eligible for Selection as Evaluation Topics

Subject Area

1. Ground/Surface Water Hydrology (effluent; treatment fac.)
2. PHC/CHIA baseline data
3. Drainage Controls (impoundments; channel relocation; diversions)
4. Notification to and cooperation of Other Agencies (LMA; USFWS; SHPO)
5. Post-Mining Land Use
6. Prime Farmland
7. Topsoil (substitutes; handling plans)
8. Overburden Analysis (toxic material handling)
9. Revegetation Plans (schedules; preparation; seeding; mulching)
10. Subsidence Plans (control plans; longwall; resource recovery)
11. Waivers/Variance (522(e); VER; buffer zones)
12. Written Findings (documentation)
13. Existing Structures (certification; modifications)
14. Administrative Data (AML fees; public notification)
15. Operation Plans (maps, cross-sections)
16. Bonding Determinations
17. Transportation Facilities (haul roads, conveyors)
18. Blasting (plans; certification; logs)
19. Excess Spoil (design; AOC; highwall elimination)
20. Special Categories of Mining (steep slope; mountain top; augering, AVF, prime farmlands, etc.)
21. Preparation Plants/Support Facilities
22. Cultural/Historic
23. Fish/Wildlife
24. Geology
25. SOAP
26. Overburden Handling Procedures
27. Remining
28. Endangered Species
29. Stream Buffer Zones
30. SRA Procedures for Validating Permit Application Information
31. Public Notice and Comment

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APPENDIX B

Suggested Format for Documentation of Technical Review Findings

Topic:

Identify evaluation topic.

Regulation:

Identify applicable State regulation(s).

Requirements:

Briefly summarize program requirement of above regulation(s).

Documents Reviewed/Discussion:

Identify all permits/associated documents reviewed and when applicable any discussions/meetings with SRA personnel which form the basis for the findings.

Findings:

The findings for each permit document reviewed will summarize the completeness/technical adequacy of the documents with references/examples specific to each permit document and the adequacy of the SRA technical review.

The findings must incorporate where applicable a review of the following as related to the discipline reviewed:

- adequacy of responses to concerns/comments raised by the public or governmental agencies other than the SRA;
- adequacy of all exemptions, waivers, variances;
- adequacy of permit conditions (stipulations);
- adequacy of documentation of SRA decisions (i.e., support of findings).

Conclusions:

Summary discussion of the impact of deficiencies (i.e., nature of impact, seriousness of impact, effects on other aspects of permitting) and discussion of the probable cause of the deficiencies (i.e., SRA management decisions, lack of SRA expertise or interpretation of the requirement, program flaw, random error).

When possible, identify the strengths, and if no deficiencies are noted, positive aspects of the SRA in the discipline reviewed.

The discussion should be of a program nature but may identify action needed specific to permit documents reviewed. Conclusions will include corrective actions needed as applicable (i.e., type of action, timing, means of correcting and carry over needed to other areas).

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APPENDIX C

Findings Document Outline

1. Summary Findings

Administrative Completeness Review:

Technical Review: Report on each area of permit application selected for in-depth technical evaluation.

National Objective Evaluation Topics:

Note: The summary statements for each category should include:

(1) the accomplishments of the State in implementing its permitting and bond setting programs and achieving the goals and objectives of those programs;

(2) the problems that may require retroactive correction, and concerns that should be addressed in future permitting or bond setting; and

(3) field evaluation findings related to each topic presented.

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2. General

- Outline the objectives of State program permitting evaluation.
- Give timeframe since last evaluation.
- Summarize permitting activities since the last evaluation by category, i.e., repermitting, new permits, renewals, revisions, transfers, etc., as well as the type of operations involved, i.e., surface mine, underground mine, preparation plant, support facility, etc. Also give the acreages involved in the permits.
- Summarize the issues of the last evaluation period that have been resolved. Issues that remain from the previous evaluation period will be included in the Permitting Implementation Issues Section below.

3. Background and Review Procedures

- Outline the Advance Team procedures in designing the State permitting evaluation plan.
- Discuss the procedures utilized during the current State permitting program review:

  Describe the total permitting actions used in this evaluation by quantity and type; i.e., repermitting, new permits, renewals, revisions, transfers, etc., as well as the type of operations involved; i.e., including but not limited to surface mine, underground mine, preparation plant, support facility.

  Identify the sample size and the rationale used for selecting samples.

  Describe the inputs and rationale used in defining the elements and scope of the evaluation. This should include the issues identified in the previous year's evaluation, the number of permitting actions, concerns raised by FOD resulting in special reviews since last evaluation, national objectives and guidelines, concerns raised by inspection and enforcement activities, and concerns of outside groups.

  Describe the procedures for conducting field evaluations. Outline the objectives and purposes of the field evaluation and the rationale for selecting certain areas for evaluation.

4. Permitting Evaluation Findings

a) Administrative Review

- Discuss findings of the administrative completeness permitting review.

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Johnston #3

Evaluation and Oversight of State Programs

Q. A December 1985 GAO report found that documentation of technical reviews of State programs conducted by OSMRE's technical staff has been inadequate, leading to the oftentimes successful challenge by State regulatory agencies and staff of OSMRE findings.

- What are you doing to remedy this situation?

A. OSMRE has specified in its permitting oversight guidelines the material to be covered and documented in the oversight review. This will assist OSMRE in making consistent and supportable findings. In addition, OSMRE is requiring that Field Offices and Technical Centers prepare a program evaluation file for each State which will be available for public review as part of the annual review process. The evaluation file will include the following:

- Factual information developed or utilized in the program;
- Format/guidelines/methods used for completion of the evaluation and the preparation of the evaluation report;
- Correspondence with the State, meeting notes concerning the program evaluation or issues reviewed by OSMRE;
- Drafts reports circulated outside OSMRE; and
- All public comments, complaints, observations on the evaluation report.

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Johnston #4

Evaluation and Oversight of State Programs

Q. According to the same December 1985 GAO report, OSMRE has developed draft guidelines which require a review of bond adequacy for all permits selected by OSMRE for oversight review. However, the guidelines apparently do not contain standard procedures and criteria for evaluating bond adequacy.

- o If confirmed, do you intend to issue standard procedures and criteria for evaluating bond adequacy?

A. The procedures and criteria should vary from State to State to address the different bonding systems, including those which involve bonding pools. In preparing for the 1986 oversight evaluations, OSMRE took steps to address inconsistencies identified during prior years in evaluating bond adequacy in the various States. Evaluation of bond adequacy was established as a national oversight objective for 1986 and will be given special attention in all States. The evaluation focuses on the State's adherence to approved program procedures and criteria for determining bond amounts. Specific questions pertaining to this review are included in OSMRE's 1986 Format and Outline for Annual Evaluation Reports on State Programs. After evaluating the effectiveness of the 1986 guidance, revisions will be made to the 1987 guidance to address concerns expressed both by those using the guidance and those affected by it.

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Johnston #1

Management Action Plan ("MAP")

Q. I understand that you plan to publish the next draft of the OSMRE Management Action Plan ("MAP") soon.

- When do you expect the document to be available?

A. The next draft of the planning document should be available in April 1986.

- Do you plan to publish a final version of the Management Action Plan ("MAP")?

A. The planning document commonly known as the MAP will be published in a draft format. Publishing such a document in that way allows for needed flexibility to make changes as circumstances change and as more information becomes available.

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Johnston #2

Management Action Plan ("MAP")

Q. Do you plan to implement the voluntary buyer blocking plan set forth in the MAP?

A. A great many concerns have been raised concerning the voluntary buyer blocking plan and, if I am confirmed, OSMRE will not press forward with the initiative unless these concerns are resolved to my satisfaction. Before committing to even a trial program, the agency would expect to have further discussions with the electric utility industry, state public utility commissions, the coal industry, Congress and other interested persons on the feasibility of the concept.

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Johnston #3

Management Action Plan ("MAP")

Q. Was the November 1985 draft Management Action Plan ("MAP") reviewed for legal sufficiency by the Department's Office of the Solicitor prior to its issuance?

- o If not, why not?
- o Did you receive any oral or written comments from the Solicitor prior to release of the draft MAP in November 1985?
- o If so, what were they?

A. The drafters decided to release a preliminary draft of the MAP in November 1985 to concerned persons in State governments, the coal industry, and environmental groups, prior to review of the document for legal sufficiency. The drafters chose this course to obtain comment on all aspects of the MAP, including the legal issues involved, as early in the drafting process as practicable. To delay release of the preliminary draft of the MAP until the Solicitor's Office completed a full review of its many proposed initiatives would have unreasonably delayed the process of drafting the plan. Moreover, because the November 1985 draft of the MAP was truly a preliminary effort, a full legal review of the document would have required the Solicitor's Office to expend considerable time and resources analyzing proposals which the drafters might ultimately abandon for policy or other reasons. In short, the drafters determined that legal review of the MAP in November 1985 would be premature. For this reason, the drafters did not request, and did not receive, oral or written comments on the November 1985 draft of the MAP from the Principal Deputy Solicitor, who was serving during the vacancy in the office of Solicitor created by the resignation of Frank Richardson in June 1985.

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Johnston #4

Management Action Plan ("MAP")

Q. In your statement, you emphasize the need for a "stable, consistent regulatory environment." I understand that one proposal in the MAP is to use negotiated rulemaking as a means of developing regulations. Please describe how this would work.

- o What steps would OSMRE take to make certain this process does not lead to further delay in the promulgation of regulations needed for a stable, consistent regulatory environment?

A. As part of the effort to improve its rulemaking process and achieve regulatory stability, OSMRE is currently exploring various alternative approaches to developing consensus on rulemaking issues. "Negotiated rulemaking" is one part of this effort. As the term is used by OSMRE, "negotiated rulemaking" encompasses a number of approaches. For example, OSMRE could utilize informal consultation with major interested parties in advance of a proposed rulemaking. On the other hand, a formal negotiation effort involving all interested parties could be used. OSMRE has already begun to improve its efforts to obtain consensus on rulemaking by providing initial draft rulemakings to interested persons.

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Because early additional public involvement supplements, rather than substitutes, for the rulemaking procedures required under the Administrative Procedure Act, it can be expected that the time required to promulgate a rule in final form will be extended. However, the additional time required at the initial stages of regulatory development will likely be at least partially offset by reducing the time required to construct a final rulemaking. In addition, achieving consensus on the final rule would reduce litigation, which in the past has added greatly to the time required to produce a rule. Thus the total time to achieve a stable regulatory environment will be reduced.

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Johnston #5

Management Action Plan ("MAP")

Q. What options is OSMRE considering to allow a State to request a review of an OSMRE inspector's action?

- o Could you please provide us with any written memorandum or other papers describing this issue and the options under consideration?

A. The concept to which you refer concerns the options a State may have in response to a ten-day notice issued by OSMRE with which it disagrees. This initiative proposed in the November 25, 1985, draft of OSMRE's Management Action Plan is based on the view that many of the decisions made during the course of implementing SMCRA represent the exercise of discretionary judgment by the regulatory authority.

The concept while not addressed in detail envisioned a review process with the State at a higher level of OSMRE management than the OSMRE inspector before determining whether Federal enforcement action should be taken against an operator. I am aware of no other OSMRE comments or memorandum addressing this review process concept. If confirmed, I intend to address this issue.

- o How can OSMRE ensure that such a review process will not result in delay?

A. A time limitation would be inherent in such a process to avoid undue delay.

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Johnston #6

Management Action Plan ("MAP")

Q. One proposal in the MAP is to decentralize assessment of penalties to OSMRE Field Offices and to develop a new fee schedule.

- o If confirmed, do you intend to implement this proposal?

OSMRE intends to proceed with the decentralization of the assessment function to the field. As part of this process the following two steps are underway: (1) The assessment process is being automated using a model obtained from Mine Safety and Health Administration (MSHA). (2) A plan has been prepared for training field staff to perform the assessment function. The plan also addresses the need for staff in the offices of the Assistant Directors East/West that can provide technical assistance and guidance to the field.

A separate study of the existing assessment system is proceeding to determine if it should be modified. As part of this study the assessment and penalty systems of other Federal agencies will be reviewed for comparison purposes. If the review indicates that changes in the Fee Schedule are appropriate, a rulemaking may be needed to make those changes.

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o What priority do you give to this proposal?

A. I consider this proposal of high priority and an effective way of improving the overall equity and consistency of our assessment and penalty approach.

o What steps will you take to ensure a policy of consistent and even-handed penalty assessment?

A. I believe that consistency on application of the assessment function can be obtained through uniform training of the individuals assessing penalties, the use of an easy to understand assessment formula, combined with oversight and evaluation performed by the Headquarters and Assistant Director staff.

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Johnston #7

Management Action Plan ("MAP")

Q. Was OSMRE's proposed Fiscal Year 1987 budget premised on implementation of the MAP or any portion of the MAP?

A. The FY 1987 budget contains three specific items related to MAP. (1) Funds for additional ADP and systems development activities $2.1 million. (2) $2.7 million for enhanced training activities. (3) $3 million for relocation costs of OSMRE employees associated with decentralization of administrative and program activities to the field.

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Johnston #8

Management Action Plan ("MAP")

Q. Has OSMRE started to implement any of the proposals described in the MAP? If so, what?

A. A number of ongoing activities were included in the MAP at the time the MAP was initiated. These were included in the MAP because they are important agency activities that provide needed perspective and content in which new proposals can be evaluated. These ongoing initiatives are:

- o Decentralization of the assessment process;
- o Renovation of the CMIS database;
- o Development of the Applicant Violator System;
- o Special effort to coordinate permit blocking for Federal violations in the period before the Applicant Violator System is operational;
- o Development of individual case tracking systems;
- o Use of a professional GSA collection schedule agent for delinquent fees and unpaid civil penalties;
- o Use of the Conference Officer approach to adjustment of penalties and settlement of civil penalty cases;
- o Development of settlement guidelines for Conference Officers and attorneys;

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- Two-acre inspection, enforcement and oversight under a Court settlement agreement;
- A technical training program for OSMRE and state inspectors;
- Development of bond adequacy guidelines for Federal permitting activities; and
- Development of rules and regulations pursuant to Court orders and OSMRE initiative.

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Johnston #1

Applicant Violator System ("AVS")

Q. Specifically what information on ownership and control will be included in the Applicant Violator System ("AVS") data base when it becomes operational in Fiscal Year 1987?

- o Could you please provide me with copies of any memorandum or correspondence that describes or discusses the nature and extent of ownership and control information to be included in the AVS data base?

A. There will be four types of ownership and control data included in the AVS when it becomes operational. (1) Data obtained from the permit application files of the state regulatory agencies and from OSMRE files for those permits under Federal jurisdiction. Information will be drawn from permanent program files and, in the case of "Megabuck" violators, from interim permit files. (2) Ownership and control data obtained as the result of OSMRE audits or from OSMRE field employees who have obtained ownership and control data from a variety of sources. (3) Data obtained from third party sources which has been verified from two independent sources and, (4) Data obtained from other data bases such as MSHA, Keystone Mine Data, etc. Data under (1) will be updated quarterly through information to be provided on a revised OSM-1 form now in preparation.

We have provided copies of two memorandums found in our files dealing with ownership and control data to be loaded into AVS.

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United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
WASHINGTON, D.C. 20240

FEB 2 6 1986

Mrs. Bonnie Kirk
Project Manager, Applicant/Violator System
Science Management Corporation
Information Systems
8300 Professional Place, Suite 300
Landover, Maryland 20785

Reference: Applicant/Violator System (AVS) Draft Project Master Plan (PMP)

Dear Mrs. Kirk:

I would again like to provide formal responses to the remaining issues and concerns you addressed in your letter of January 30, 1986, regarding overall design project schedule for AVS.

On the issues impacting overall design and project schedule, I would like to address each item specifically.

1. Ownership and Control, Page 1.

   Our response to your January 30, 1986 letter provided specific direction as to what level of ownership and control the system should accommodate and on what basis the States would block issuance of permits. From recent discussion with Mr. Shafer and members of his staff and, more importantly, concern expressed by Mr. Udall during the recent oversight hearing, the level of association must be capable of fully implementing the intent of the Committee and Congress.

   Based upon the concerns, the system design must be capable of building relationships with appropriate linkage information with an unlimited ceiling. It must be inherent that the States taking action have available all the levels of association. It would then be a policy concern of this office to set the requirements concerning the action the State would take.

   Relating to the issue impacting data collection, your efforts should be geared at collecting a thorough but reasonable amount of ownership and control information specifically available on all permanent program permits and applications which have not gone beyond Phase II bond release and those identified interim

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program permits tied to Collection Management Information Systems (CMIS) violators contained in response to item 2 and 3 in our letter of February 14, 1986. In addition to FTA/CO violators, you will include violators responsible for unpaid civil penalties, and eminent harm CO's.

2. Active and Inactive Permits, Page 2.

Our response to your January 30, 1986, letter should be amended to include permits tied to violators responsible for unpaid civil penalties and eminent harm CO's.

3. AVS Violations, Page 2.

Our response to your January 30, 1986, letter has not changed.

4. Automated States, Page 4.

Our working with the States indicate that they who are automated provide to AVS a flat file format for which we will provide the data element requirements. This should be accomplished without much cost incurred by the States for which reimbursement might be required. Additional changes required to these systems for capturing new data elements, however, would be considered a reimbursement item; the exact details at this time have not been completely worked out. It is public knowledge that for several of the automated States (Kentucky and Virginia) the cost indicated for equipment and/or software modifications is extremely high! At this time considering the budget funding for FY 1986 would preclude these modifications, we must consider the electronic interface to be limited. Our present position, because of the money available for actual equipment, necessitates a phased approach to electronic interface for Kentucky and Virginia. In addition, we will provide personal computers with additional hard disk memory, modems, and printers when required. Beyond these and until budget concerns dictate otherwise, this is the direction we must take. Should events occur which would change this direction, you will be advised immediately.

On the issue impacting schedule only, I would like to again address that one specifically.

For Indian lands, several States through cooperative agreements with the Office of Surface Mining Reclamation and Enforcement (OSMRE) have the responsibility for issuing permits. These permits would be located at these State Regulatory Authority (SRA) and, if that States were automated, then the data would be available in mechanical form. For those which are not automated, then the applications/permits would be available along with permits for mining in that State not on Indian lands.

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On the issues impacting specific design alternatives, I would like to address each item specifically.

1. Definition of AVS Data Elements, Page 5.

   Based upon our meeting with State Ad Hoc Committee in Denver, I believe we now have a sound identification of all required application/permits data elements which we and all the States agree upon. The results are those data elements which are reflected in the document you provided me in draft titled Application/Permit Data Element Inventories.

   These elements and the glossary Appendix B, which is not a required deliverable, are being compared to a glossary generated as part of OSMRE recent Management Action Plan. Once these comparisons are made, we will settle on a concensus definition for incorporation on the draft AVS Data Dictionary. When the above exercise is completed, we should meet and finalize these definitions.

2. Violation Appeal, Page 5.

   Violations which are outstanding but for which the violator is in the process of appeal/hearing would require the system to notify the appropriate SRA that there has been reported the fact that this action (violation) is in the appeal/hearing status. It would result under the proposed Permit Condition Rule that the permit be issued subject to the outcome of the appeal process. This would be a decision made on behalf of the SRA.

3. Civil Penalties, Page 5.

   AVS is required to include in addition to FFACO cases which are equal to $22,500 or greater all unpaid civil penalties and we would key the search on citation and not the violation as structured in the current OMIS (S2K) data base.

4. Succession/Transfer Permits, Page 6.

   Yes, violations should be linked to both previous and new permittees as long as either the violation condition has not been abated acceptably by the approving authority or the unpaid civil penalty amount is still outstanding. Yes, AVS should inform inquirer of the succession/transfer status. Yes the history of the violations should be maintained for both permittees. It would suffice for one response be provided indicating what the type of violations were or for multiple violations.

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I hope that these clarifications along with the responses provided earlier in our February 14, 1986, letter answer the questions you raised and provide you with enough direction to continue the design of AVS.

Please feel free to call upon me should additional issues arise which you feel require clarification.

Sincerely yours,

/s/

Ron Tarquinio
Applicant/Violator System Contract
Officer's Technical Representative

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requested and agreed upon by all parties present. It should be available to us by January 21, 1986, and you will be notified immediately.

It is hoped that these clarifications will provide you with clear direction and answer your concerns so we can continue to work towards development and delivery of the deliverable products referenced in your letter of January 30, 1986. It is of the upmost importance that the Functional and Data Requirements Document, the Enhanced Project Master Plan, Data Collection Plan and Form, and the Kentucky and Virginia edit and load programs be sound and comprehensive.

I hope that we can continue the efforts put forth thus far by all responsible parties regarding the successful development and implementation of the MVE.

Sincerely yours,

Ron Tanquinio
Applicant/Violator System Contract
Officer's Technical Representative

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Johnston #2

Applicant Violator System ("AVS")

Q. Upon what do you rely in reaching the conclusion that the "one-up, one-down" approach to ownership i.e., limiting the extent of ownership information to entities directly owning or owned by a violator, comports with the requirements of SMCRA?

- o If you rely on any legal memorandum or opinion in reaching this conclusion, please provide me with a copy.

A. There is considerable misunderstanding regarding the meaning of the concept. Briefly the computer system will be capable of searching the entire data base for violator relationships. The one-up one-down concept refers to the numbers of layers of ownership/control OSMRE must put into the data base for non- coal entities. All coal enterprises with violations will be in the data base.

The decision on what applicant ownership information should be included in the computerized Applicant/Violator System (AVS) was based upon SMCRA, the Secretary's regulations implementing SMCRA, and the revised Parker Order which required the Secretary to develop the system. Specific references include (1) Section 507(b)(4) of SMCRA, (2) the definition of "principal shareholder" contained in 30 CFR Section 701.5, (3) the information requirements of 30 CFR 778.13(c) and (d) and (4) page 2 of the revised Parker Order which specifically references 507(b)(4) of SMCRA.

No specific legal memorandum or opinion was relied upon in determining the required information.

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Johnston #3

Applicant Violator System ("AVS")

Q. Under OSMRE's budget request for Fiscal Year 1987, $1.2 million will be spent on a contract to undertake phase II of the AVS which, according to OSMRE, will include expansion of the system data base.

- o Please specifically describe the additional information that will be included in the data base under phase II.
- o Could you please provide me with copies of any memorandum or correspondence that describes or discusses the nature and extent of ownership and control information to be included in the AVS data base under phase II?

A. Phase II of the AVS as mandated by language in the permanent 1986 Continuing Resolution for the Department of Interior, will include data on state enforcement actions and civil penalties.

The ownership and control data in the AVS which will interact with Phase II data is the same as that which will interact with Phase I data. The ownership and control data is in a sub-data base which can be searched against violations found in data loaded under any of the three phases planned for the AVS.

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Johnston #1

Inspectable Units List

Q. In OSMRE's Budget Justification for its proposed Fiscal Year 1987 budget, I note that you indicate that interim program sites on the inspectable units list will be inspected to ensure that reclamation has occurred prior to removal from the list.

- o If confirmed, will you give this inspection effort high priority?

A. Because of concerns expressed about inappropriate releases and OSMRE enforcement actions taken long after bond releases, I am directing our Field Offices to participate jointly in State bond release proceedings on a sample basis.

If confirmed, I would continue to monitor this situation closely, work with any State which appears to have problems in this area, and take direct enforcement action as necessary.

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Johnston #1

OSMRE Decentralization

Q. The budget justification for the Office of Surface Mining Reclamation and Enforcement ("OSMRE") states that OSMRE is planning an "organizational realignment and the decentralization of certain program functions to the field." However, as you know, OSMRE was reorganized in 1981, and as a result, according to some observers, the agency lost almost 50 percent of its experienced personnel, leaving the agency demoralized and ineffective. In response to questions submitted after the February 18, 1986 budget hearing, the Department characterized the 1981 reorganization as follows:

> "This was a major reorganization that streamlined certain assistance functions within OSMRE's Headquarters; established field office units and provided definite program improvements and increased State activities as intended by SMCRA." (Emphasis added.)

o Does this description comport with your own personal view of the 1981 reorganization?

A. It was necessary to reorganize OSMRE in 1981. The agency's role was changing from one of actual implementation of SMCRA which included responsibilities and review of proposed State programs to one of State program oversight and technical assistance as States gained primacy and began to operate their own regulatory programs. It was a reorganization that did make improvements to the Office that were necessary in view of the changing nature of the agency's activities and responsibilities.

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Johnston #2

OSMRE Decentralization

Q. What is the current status of development of the decentralization plan and timetable?

- o Will you provide a detailed description of the decentralization plan and timetable to me prior to implementation?

A. OSMRE decentralization is being studied by two task forces; one dealing with administrative decentralization and the other with programmatic decentralization. Both of these groups are scheduled to provide their findings to me as they are completed. Their reports will include detailed proposals for which functions should be decentralized and the timetable for accomplishing decentralization. Following receipt of these reports I will carefully review them and make a final decision on the timing and extent of decentralization. I will be pleased to provide the Committee with our decentralization plan after I have made my decision. I intend to meet with interested Committee members prior to implementation.

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Johnston #3

OSMRE Decentralization

Q. The Department has indicated that you do not anticipate any reductions in force as a result of the decentralization. Specifically what are you anticipating by way of transfers and resignations?

A. I believe that decentralization can be accomplished without a reduction in force for three reasons. (1) OSMRE has a fairly high turnover rate (average 8% per year) which will allow vacancies to be frozen and transferred to new locations when they occur. (2) Many OSMRE employees tend to be mobile and willing to relocate. We have already had indications from many employees in Headquarters at a variety of grade levels of willingness to relocate to the field. (3) The decentralization process will take place over a fairly long period of time (18 months) which will allow the agency greater flexibility in moving vacancies and giving employees maximum flexibility in reassignment.

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Johnston #4

OSMRE Decentralization

Q. Will employees be given a choice regarding whether to transfer or continue to work in their current locations?

A. Within the next several weeks a questionnaire will be sent to all OSMRE employees requesting information on their preferences for work locations. Up to five preference indications will be requested. This data will be loaded into a data bank and will be used, to the greatest extent possible, in making reassignments of personnel resulting from decentralization.

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Johnston #5

OSMRE Decentralization

Q. Specifically what additional steps will OSMRE take to ensure that policies are uniformly implemented in view of the greater degree of decentialization proposed?

A. The OSMRE directive system will be reviewed and all policy and procedural directives updated and reissued so that field employees will have a consistent and current source of policy guidance. To avoid fragmented and inconsistent policy direction, policy development will be a Headquarters Office responsibility. The Assistant Directors East/West and their staffs will be responsible for (1) assuring that new and current policies are being implemented, and (2) assuring consistent implementation of those policies. Any questions about interpretation of policy or disagreements about the effectiveness or appropriateness of specific policies will be referred to the Headquarters for resolution.

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Johnston #1

Agency Management

Q. OSMRE's Budget Justification references a "management savings initiative," under which the agency plans to assess vacant positions to determine whether they can be filled at lower grade levels or as career ladder positions that lead to the vacated grade level.

- What types of positions does OSMRE plan to downgrade?

A. To a great extent, staff type positions, and positions which were filled on an incumbency basis at a higher grade to protect the pay of particular employees during the 1981 reorganization are targeted for refilling at lower grades as they become vacant. Technical positions (including inspectors and reclamation fee specialists) are not included in these categories.

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QUESTIONS SUBMITTED BY SENATOR METZENBAUM

Metzenbaum #1

Interim Program Sites

Q. In response to questions from the Committee during his confirmation hearings to be an Assistant Secretary of the Department of the Interior, Mr. Steven Griles indicated that the enforcement authority conferred by the Surface Mining Control and Reclamation Act was not affected in any way by the release by a State of an interim program bond. If violations were found to exist on those sites, Federal inspectors would be required to initiate enforcement action pursuant to section 521 of the act.

Do you concur with the position taken by Mr. Griles, and will you implement that position?

A. I agree with Mr. Griles that there is no correlation between State-imposed interim program bonds and the termination of enforcement responsibility under SMCRA. If during an oversight inspection a violation is found on an interim program site, OSMRE would refer the violation to the State for appropriate enforcement action pursuant to section 521 of the Act. OSMRE is considering a rulemaking to clarify enforcement responsibilities on interim program sites. Mr. Griles and I would be pleased to discuss this issue with the Committee.

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Metzenbaum #2

Interim Program Sites

Q. There is a problem regarding the release of interim program bonds for sites upon which reclamation has not been completed, and the failure to take enforcement action against mines which were active during the interim program and have been left unreclaimed.

What do you plan to do to address those problems?

A. If confirmed, I will continue to monitor this situation closely, work with any State which appears to have problems in this area, and assure that appropriate enforcement action is taken as necessary.

Because of concerns expressed about inappropriate releases and OSMRE enforcement actions taken long after the site was released, I am directing our Field Offices to participate jointly in State interim site release proceedings on a sample basis.

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Metzenbaum #3

Two-Acre Exemption

Q. Please respond in detail on the following issues related to OSM's efforts to implement the agreement recently entered into with several citizen organizations (SOCM et al. v. HODEL, Civil Action No. 81-2238 (D.D.C.)) with respect to abuse of the two-acre exemption.

a. There appears to be a practice whereby coal operators mine numerous sites through the use of "shell" permittees. However, regulatory authorities enforce only against the "shell" permittee, who typically has few assets. Consequently, the enforcement action is ineffective and the mine site left unreclaimed. Do you agree that enforcement action should also be taken against the operators of the sites (as well as the permittees)? If so, how do you plan to determine who the operator is on these sites?

A. I believe that enforcement action should be taken against all responsible parties. OSMRE is currently developing a rule to determine responsibility of involved parties. Information to determine operators will be collected by OSMRE in Virginia and by the State in Kentucky, with OSMRE assistance, from permit records, interviews with personnel on the mine site, abandoned mine land fee collection records and investigations, the applicant-violator system when developed, and other sources as appropriate.

b. What do you plan to do to ensure that two-acre permits issued in the future are issued properly, and that these sites do not in fact exceed two acres? What relatedness determinations (for both new and old two acre sites) do you plan to perform? If so, please describe the system. What checks of permit applications do you plan to perform? Do you receive all two-acre permit applications?

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A. OSMRE has no direct role in the issuance of permits for less than two-acre sites. State regulatory authorities are responsible for both issuance and monitoring of such permits when these sites are permitted under State law. OSMRE reviews these actions in an oversight capacity. In Virginia, the number of these permits now being issued is small, and no significant problems have been identified. In Kentucky, OSMRE is intensively reviewing State permitting and inspection and enforcement activities as part of the settlement agreement. The State has agreed to expand the information being gathered for relatedness investigations made by the State regulatory personnel to assure that the applicants or operators of two-acre sites do not own or control other operations which would bar the issuance of the permits. OSMRE has been informed that the State intends to interview operator personnel on mine sites to gather information and enter this into the State's computer system along with data gathered from OSMRE's AML fee audit program and data from the permit application. Once OSMRE's applicant-violator system (AVS) is operational, the State will use that system as well. The AVS will have the capability to produce information on persons who owned or controlled previous mining operations which have outstanding violations of SMCRA and to identify the owners and controllers for current permit applications. We have been informed that once a permit has been issued, Kentucky intends to inspect each active operation twice a month to assure that the two-acre limit is not exceeded.

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Metzenbaum #4

Q. Please address the following question concerning the development of the computer system required by the Court Order in SOCM et al. v. HODEL, Civil Action No. 81-22134 (D.D.C.).

a. How do you plan to collect information on both ownership and control of operations for each type of violation and permittee/applicant?

Do you plan to include control information from OSM's AML audit files? When will this effort begin and when will it be completed?

A. There are several methods which will be applied to the collection of ownership and control information for the AVS. The contractor will collect permanent program permit application information on ownership and control and for Megabuck cases ownership and control data from both permanent and interim applications.

The data will be updated quarterly through a revised OSM-1 form which is being changed to include a requirement for the submission of current ownership and control data.

Information obtained as the result of audit, inspection, or from other internal OSMRE sources will also be included in the ownership and control data base. Data received from external sources which can be validated by two independent sources will also be loaded into the system. Finally, data obtained from other Federal data bases or private data bases, such as MSHA and Keystone Data, Inc., will be included in the system.

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Data gathered from audit sources will be loaded beginning in the fall of 1986 and will be ongoing from that point forward.

b. Will the AVS system include information on:

a. nonpayment of AML fees;
b. uncollected civil penalties;
c. unabated cessation orders;
d. fines and penalties resulting from unabated enforcement actions by State regulatory agencies?

What is the time frame for adding these components to the data base?

For each of the above categories of violations, please state what information bases you will examine to develop ownership and control information.

A. The AVS will contain information on delinquent AML fees, uncollected civil penalties, unabated cessation orders, and imminent harm cessation orders.

Fines and penalties resulting from unabated State actions are scheduled for inclusion in Phase II of the AVS.

The Federal data to be included in Phase I will be loaded into the AVS data base in the late fall or early winter of 1986. The court order requires that the system begin operation on February 1, 1987. State data base (Phase II) will be loaded starting in the summer of 1987.

Delinquent AML fees will be provided from the AML fee system operated by OSMRE; uncollected civil penalties, unabated cessation orders, and imminent harm cessation orders will be loaded from the CMIS system of OSMRE.

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c. Do you have adequate resources to implement the application/violator computer system?

A. We believe that the resources presently included in our FY 1986 budget as well as the resources requested in our FY 1987 budget are sufficient to implement the AVS. The system is presently scheduled to become operational on February 1, 1987, in accord with the revised Parker Order. OSMRE is agreeable to an extension to that timeframe if necessary to allow for additional testing and a slower pace in data collection, data validation, and systems loading.

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Metzenbaum #1

Historic Preservation

Q. According to the Ohio Historical Society, the State of Ohio experienced a widespread loss of prehistoric sites since the Ohio program received primacy under the Surface Mining Control and Reclamation Act ("SMCRA"). Apparently, this was due to the denial of requests to perform cultural resources surveys prior to permitting. I understand that recent changes in the Ohio State program may soon result in achievement of a proper level of consideration for cultural resources in Ohio.

o Please describe specifically what steps you have taken since becoming the Acting Director of the Office of Surface Mining Reclamation and Enforcement ("OSMRE") with respect to the issue of historic preservation and the Ohio State program.

A. The issue of historic preservation in the Ohio State program has been addressed in several ways. A letter of June 13, 1985, to the State Historic Preservation Officer (Ohio Historical Society) discussed the basic requirements for consideration of historic properties contained in OSMRE's program, and suggested ways in which the Ohio Department of Natural Resources (ODNR - the State regulatory authority) might meet those requirements. Subsequent meetings of my staff with ODNR have expanded on these requirements and appropriate means of implementing them. Two training sessions on historic preservation program provisions have been held in Ohio by my staff. The first was attended by approximately 10 ODNR staff involved in permitting and inspection and enforcement. The second was attended by approximately 50 representatives of the mining industry. Both sessions included participation by the State Historic Preservation Officer.

As a result of these efforts, considerable progress has been made in the Ohio program. The OSMRE Field Office Director is working with ODNR to ensure that progress continues. Dr. Annetta Cheek, OSMRE's historic preservation officer, will be meeting in Ohio to review the progress of the State program.

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Metzenbaum #2

Historic Preservation

Q. What steps are you taking to provide clear guidance at the Federal level with respect to the protection on a nationwide basis of cultural and historic resources under both Federal and State programs?

A. Several steps have been taken to provide guidance with respect to the protection of cultural and historic resources under Federal and State programs.

- A new position of agency historic preservation officer was created, to replace a staff person who had been fulfilling this function as a collateral duty. Dr. Annetta Cheek, formerly of the Departmental Consulting Archeologist's office (National Park Service), was hired in December 1985, to fill this position. Dr. Rex Wilson, a senior archeologist experienced in OSMRE's program, was recently moved from Denver to the Eastern Technical Center in Pennsylvania where there was previously no staff archeologist. Dr. Wilson will provide improved guidance to eastern States. We retained a staff archeologist in Denver.

- In hearings before Congressman Seiberling in July 1985, OSMRE committed to prepare regulations to clarify the provisions in OSMRE's program for the consideration of historic properties. Proposed regulations have been

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published for public comment in the Federal Register, March 11, 1986. A guidance document providing additional information on how the requirements in the regulations can be met effectively and efficiently is under preparation.

- The petition for rulemaking submitted by the Society of Professional Archeologists was reconsidered at the request of the society. This organization requested that OSMRE promulgate regulations clarifying how State regulatory authorities were to identify and consider properties eligible for, but not yet listed on, the National Register of Historic Places. In December 1985, I granted the petition in principle; the petitioner's basic concerns are covered in the proposed regulations published on March 11, 1986.

- A training program has been developed to provide information to the States, OSMRE staff, and industry on the requirements of our program for the consideration of historic properties. To date, this program has been presented to State staffs and industry in Ohio (two sessions), Missouri, Illinois, Kansas, and New Mexico, as well as to OSMRE's Eastern Technical Center staff in Pennsylvania. Upcoming sessions are scheduled in Colorado and Utah.

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Metzenbaum #3

Historic Preservation

Q. Do you think that permit applicants should be required to develop a program to ensure protection of cultural resources?

A. Decisions on whether permit applicants should be required to develop a program to ensure protection of cultural resources are appropriately made on a case-by-case basis by the regulatory authority. Conditions specific to individual permit areas need to be considered in making this decision. Such conditions include previous land disturbance, presence of topographic features known to be related to the occurrence of important historic resources, known historic resources in the permit and nearby areas, and priorities established by the State Historic Preservation Officer in the State Historic Preservation Plan. Regulatory authorities need to consider these factors, and others, as well as comments on permit applications received from the State Historic Preservation Officer, in determining whether an applicant should develop a program to ensure protection of important cultural resources.

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QUESTIONS SUBMITTED BY SENATOR BINGAMAN

Bingaman #1

Q. Section 710 of SMCRA placed a duty on OSM to recommend legislation for Indian lands. While some policy options were recommended to Congress in 1984, there is still no Indian Lands legislation.

A. In February 1984, the Secretary of the Interior submitted a report to the U.S. Congress in accordance with Section 710 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The report included several legislative options designed to allow Indian tribes to elect to assume regulatory authority for surface coal mining on Indian lands. The proposed legislation was prepared as a series of amendments to SMCRA. We believe we have satisfied the requirement of Section 710 of SMCRA. The Department has no plan to submit additional legislation at this time. We look forward to working with the Congress in finding satisfactory solutions to the difficult Indian lands questions.

Bingaman #2

Q. Does OSM have plans to submit Indian lands legislation as required by Section 710? If so, when? If not, why not?

A. See Answer #1

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Bingaman #3

Q. In the absence of Section 710 legislation, no tribe can utilize AML funds from their lands.

A. OSMRE agrees with this comment because the Indian tribes are restricted from obtaining authority to regulate active mining and because of this restriction cannot obtain approval of their Abandoned Mine Land Programs. However, OSMRE has provided Secretary's discretionary funds to do the highest priority projects on tribal lands. We have worked closely with the tribes in accomplishing these projects. These cooperative efforts provide valuable training and experience to the tribes so that they will be able to proceed with their programs when they can be approved.

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Bingaman #4

Q. How much money is in the Indian AML account? What is the breakdown by tribe? Can these funds be made available to tribes through cooperative agreements entered into pursuant to 31 U.S.C. Section 6301?

A. Through September 30, 1985, $33.2 million has been collected as tribal share funds. These funds include: $4.7 million for the Crow Tribe, $2.0 million for the Hopi Tribe, and $26.5 million for the Navajo Nation. These tribal share funds cannot be made available to the tribes through cooperative agreements pursuant to 31 U.S.C. Section 6301 because SMCRA requires that state/tribal share funds be awarded through grants and only after both regulatory and abandoned mine land programs have been approved.

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Bingaman #5

Q. What is your interpretation of the District of Columbia Circuit Court decision regarding the Montana v. Clark case?

A. In Montana v. Clark, the Circuit Court upheld OSMRE's crediting of AML fees from coal mining operations in the Crow-ceded strip to the Crow Tribe. We interpret this to mean that our treatment of these AML funds is correct.

Bingaman #6

Q. Do you intend to follow the Circuit Court's definition of Indian lands with respect to federal regulation of Indian lands?

A. The Circuit Court's treatment of Indian lands is consistent with OSMRE's regulation of Indian lands. OSMRE is currently regulating coal mining operations on all Indian lands, pursuant to 30 CFR Part 750.

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Bingaman #7

Q. How do you intend to strengthen the ability of tribes to take regulatory primacy after Section 710 legislation is passed?

A. The Office of Surface Mining Reclamation and Enforcement (OSMRE) issued final regulations in September 1984 providing for the development, approval, and administration of Tribal-Federal Intergovernmental Agreements (30 CFR Part 755) between OSMRE and Indian tribes. Under these funding cooperative agreements, OSMRE provides technical and financial assistance for the training of Indian tribes and/or tribal members in anticipation of eventual Congressional enactment of legislation allowing Indian tribes to assume primacy for regulation of surface mining on Indian lands. The agreements are designed to allow maximum tribal participation pending the passage of Indian lands legislation, and ultimately to allow the tribes to assume regulatory authority as soon as such legislation is enacted.

At the present time, OSMRE has funding cooperative agreements with the three coal producing tribes (Crow, Hopi, and Navajo) which cover both the financial and programmatic aspects of tribal training, including permitting, inspection and enforcement activities. The agreements are renewed annually.

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Bingaman #8

Q. Do you intend to consult with tribes concerning matters affecting their interest?

A. It is important that OSMRE maintain open communications with Indian tribes and consult with tribes on all matters that directly affect their interests. To attain this objective, I have personally met with Indian officials on several occasions and have implemented some organizational changes to expand existing communication channels. A senior Headquarters manager has recently been designated as OSMRE's Indian Lands Coordinator to monitor and coordinate field operation activities with my office and with other Departmental bureaus and offices. An Assistant Directorate for Western Field Operations was established in Denver, Colorado, to coordinate all western field operations, including those specifically affecting Indian tribes. The Assistant Director is actively involved in tribal issues and is working with OSMRE Field Office Directors in their areas of responsibility to strengthen their relationships with Indian tribes.

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Bingaman #9

Q. Why didn't OSM consult with the Navajo Nation prior to executing a settlement agreement with the State of New Mexico concerning trust allotments within the Eastern Navajo Agency?

A. On September 28, 1984, the Department of the Interior promulgated regulations governing surface coal mining and reclamation operations on Indian lands under the Surface Mining Control and Reclamation Act of 1977 (48 FR 38462). On November 26, 1984, New Mexico sued the Department in the United States District Court for the District of Columbia (New Mexico, ex rel., v. Department of the Interior, et al., Civil Action No. 84-3572), challenging certain aspects of the Secretary's jurisdiction as described in the regulations. The Navajo tribe intervened in the action supporting and defending the Secretary's regulations and filed a counterclaim against New Mexico seeking declaratory relief that the State had no regulatory jurisdiction over surface coal mining and reclamation operations on Indian lands. The tribe also sought a prohibition against the State from regulating on certain lands identified in the counterclaim.

The Department and New Mexico subsequently entered into negotiations in an attempt to settle the litigation. New Mexico informed the Department at the outset of these negotiations that it was communicating regularly with the Navajo Tribe and would keep the Navajos fully informed of the negotiation developments. The Department was aware that the Navajo Nation knew that an agreement was being negotiated and consequently assumed, albeit erroneously, that the Navajo Nation was being kept fully apprised of developments. This assumption was reinforced by the fact that the Navajos did not contact OSMRE for information or progress reports. OSMRE agrees that communication with the tribe during the negotiation process could have been improved.

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Bingaman #10

Q. You inherited an organization under criticism from many groups. What efforts have you made for public input from various constituencies regarding your management reform proposals?

A. The most significant thing I have done is to make it clear that we sincerely want input from the public and outside constituencies on what we are doing, how we are doing it, and how we might do it better. We have actively sought every opportunity to stress this involvement. Last October, I established an external affairs office whose express purpose is to facilitate communications with the various interest groups affected by SMCRA. In addition, I have established a Regulatory Development Staff within the Office of the Director and assigned it the responsibility for coordinating the development of regulations. A major activity of this staff will be to seek ways to improve public involvement in rulemaking. In addition, where practicable I will continue to seek public input on policy decisions that do not require rulemaking, when appropriate.

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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510

March 18, 1986

Mr. Jed O. Christensen
Acting Director
Office of Surface Mining Reclamation and Enforcement
U.S. Department of the Interior
Washington, D.C. 20240

Dear Mr. Christensen:

I am writing to request clarification of your response to a question transmitted to you subsequent to your confirmation hearing. The question (Johnston Question No. 2) pertains to development of the Applicator/Violator System ("AVS") and the use by the Office of Surface Mining Reclamation and Enforcement ("OSMRE") of the "one-up, one-down" approach to the ownership and control data base.

I have the following additional questions on this topic:

(1) In your response, you draw a distinction between non-coal entities and coal enterprises. Why? Isn't the same ownership and control data necessary regardless of whether the owning or controlling entities are non-coal or coal enterprises?

(2) You state in your response that you rely on Section 507(b)(1) of the Surface Mining Control and Reclamation Act ("SMCRA") in limiting ownership information to the "one-up, one-down" approach. Why?

(3) Do you also rely on Section 507(b)(4) of SMCRA in limiting control information to the "one-up, one-down" approach? If so, please set forth your rationale.

(4) Do you think that the use of the phrase "any subsidiary, affiliate, or person controlled by or under common control with the applicant" in Section 507(b)(5) of SMCRA has any bearing on the extent of ownership and control information required to be included in the AVS data base? Please provide your rationale.

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(5) In response to Johnston Question No. 1, you attached a letter dated February 26, 1986, which states, in pertinent part, as follows:

> From recent discussion with Mr. Shafer and members of his staff and, more importantly, concern expressed by Mr. Udall during the recent oversight hearing, the level of association must be capable of fully implementing the intent of the Committee and Congress.
>
> Based upon these concerns, the system design must be capable of building relationships with appropriate linkage information with an unlimited ceiling.

Does this mean that OSMRE no longer plans to limit the ownership and control information included in the data base to the "one-up, one-down" approach? Please explain.

I appreciate your prompt response to these additional questions.

Sincerely,

J. Bennett Johnston
Banking Minority Member

JBJ:pbr

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United States Department of the Interior

MAR 24 1986

Honorable J. Bennett Johnston
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator Johnston:

Enclosed are responses to the follow-up questions submitted on March 18, 1986, for clarification of previous responses.

Thank you for the opportunity to provide this material for the Committee's consideration.

Sincerely,

Director

Enclosure

cc: Honorable James A. McClure

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Johnston #1

Q. (1) In your response, you draw a distinction between non-coal entities and coal enterprises. Why? Isn't the same ownership and control data necessary regardless of whether the owning or controlling entities are non-coal or coal enterprises?

A. There was no intention to distinguish between "non-coal" and "coal" enterprises in this response. Section 510(c) of the Surface Mining Control and Reclamation Act (SMCRA) refers to violations at any surface coal mining operation. The Applicant Violator System (AVS) data base will include entities with coal mining related violations and the entities which own or control such violators. The characterization of the owning or controlling entities as "coal" or "non-coal" enterprises is not relevant to the determination under Section 510(c) or to the information included in the AVS data base.

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Jonnston #2

Q. (2) You state in your response that you rely on Section 507(b)(4) of the Surface Mining Control and Reclamation Act ("SMCRA") in limiting ownership information to the "one-up, one-down" approach. Why?

A. The Applicant Violator System is intended to aid in making the determination required under Section 510(c) of the Surface Mining Act, 30 U.S.C. 1260(c), that "any surface coal mining operation owned or controlled by the permit applicant" either is not in violation of the Act and other environmental protection laws or such a violation is in the process of being successfully corrected. Under Section 510(c), the determination is to be based upon information submitted by the applicant listing the violation history of the applicant, and upon "other information available to the regulatory authority." Section 510(c) does not specify what other information a regulatory authority must have to make the necessary determination.

Under the Surface Mining Act, the only ownership information which must be available to the regulatory authority is that required under Section 507 to be included in permit applications. Two subsections of Section 507, paragraph (b)(4) and (b)(5), relate to entities owning, controlling, or affiliated with the permit applicant.

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Section 507(b)(4) requires that, where a permit applicant is a partnership, corporation, association, or other business entity, the application must include officers, partners, directors, and "any person owning, of record 10 per centum or more of any class of voting stock of the applicant." Subsequently in that paragraph, in an apparent reference to the 10 percent owners of record, the Act requires a list of names under which the "principal shareholder" previously operated surface coal mining operations. The ownership information to be included in the AVS system will reflect all information submitted in permit applications under Section 507(b)(4).

These data will then be supplemented with ownership and control data obtained from other sources such as MSHA data bases, data obtained from OSMRE audits, and data provided from external sources which has been verified as to its accuracy.

The system will be capable of searching the entire data base for ownership or control relationships, regardless of how those terms are ultimately defined in the pending rulemaking.

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Johnston #3

Q. (3) Do you also rely on Section 507(b)(4) of SMCRA in limiting control information to the "one-up, one-down" approach? If so, please set forth your rationale.

A. Section 507(b)(4) of the Surface Mining Act is relied upon to establish the control information to be included in the Applicant Violator System insofar as that section specifically requires permit applicants who are partnerships, corporations, associations, or other business entities to list in permit application every officer, director, or person performing a function similar to a director of the applicant. All of that information will be included in the AVS data base, as well as any other information available which would establish a control relationship. The so called "one-up, one-down" approach to which you refer does not in any way characterize the control information to be collected and maintained in the system.

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Johnston #4

Q. (4) Do you think that the use of the phrase "any subsidiary, affiliate, or person controlled by or under common control with the applicant" in Section 507(b)(5) of SMCRA has any bearing on the extent of ownership and control information required to be included in the AVS data base? Please provide your rationale.

A. Section 507(b)(5) of the Surface Mining Act requires permit application submissions regarding "the applicant, any subsidiary, affiliate, or persons controlled by or under common control with the applicant." This statutory terminology is different from the phrasing "owned or controlled by the applicant" in Section 510(c). Section 507(b)(5) provides regulatory authorities with information relating to previous permit revocations and suspensions and bond forfeitures. Where relevant and available, information obtained under Section 507(b)(5) will be included in the Applicant Violator System data base.

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Johnston #5

Q. (5) In response to Jonnston Question No. 1, you attached a letter dated February 26, 1986, which states, in pertinent part, as follows:

> From recent discussion with Mr. Shafer and members of his staff and, more importantly, concern expressed by Mr. Udall during the recent oversight hearing, the level of association must be capable of fully implementing the intent of the Committee and Congress.
>
> Based upon these concerns, the system design must be capable of building relationships with appropriate linkage information with an unlimited ceiling.

Does this mean that OSMRE no longer plans to limit the ownership and control information included in the data base to the "one-up, one-down" approach? Please explain.

A. The letter you refer to was written to the AVS contractor. We have instructed the contractor to design the system so that it is capable of building relationships with appropriate linkage information with an unlimited ceiling. However, the basic applicant information to be included in the AVS for all applicants will be that required in the permit application in accordance with 507(b)(4). As information is provided to us from other sources that indicates additional ownership or control links, that information will be included in the system if verified.

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APPENDIX III

Additional Material Submitted for the Record

INTRODUCTORY STATEMENT
OF
SENATOR ORRIN G. HATCH
March 7, 1986

Nomination of Jed D. Christensen
Director, Office of Surface Mining
Reclamation and Enforcement,
Department of Interior
Energy and Natural Resources

Mr. Chairman:

It is with sincere pleasure that I inform the Senate Committee on Energy and Natural Resources of my support for President Reagan's nomination of Jed D. Christensen to be Director of the Office of Surface Mining Reclamation and Enforcement in the Department of the Interior.

Mr. Christensen's considerable management experience in state and local government in the West well qualifies him for leadership of a Federal program such as the surface coal mining reclamation and enforcement program which has so many important interactions with state programs and agencies. In addition, his experience as a senior management official within the Department of the Interior has provided him with first hand knowledge of interrelated natural resource management issues that is essential for the successful direction of a regulatory program with such varied impacts as that of the Office of Surface Mining Reclamation and Enforcement.

It was indeed fortunate that an official of Mr. Christensen's qualifications was available for appointment

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as Acting Director of the Office of Surface Mining Reclamation and Enforcement when Secretary Hodel was faced with the necessity of filling a vacancy at the head of that Interior agency. Mr. Christensen's successful record since April of 1985 in leading the Office of Surface Mining Reclamation and Enforcement on an acting basis adds to my confidence in his ability to carry out the responsibilities of Director on a permanent basis. I therefore urge the Committee to take prompt favorable action to confirm Mr. Christensen's nomination.

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ENVIRONMENTAL POLICY INSTITUTE

TESTIMONY
OF
JAMES S. LYON
PROJECT DIRECTOR
FOR THE
CITIZENS MINING PROJECT

BEFORE THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

REGARDING
CONFIRMATION OF
JED CHRISTENSEN
AS
DIRECTOR OF OSM

March 7, 1986

218 D Street, S.E., Washington, D.C. 20003 (202) 544-2600

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Thank you for the opportunity to testify, my name is James S. Lyon. I'm Project Director for the Citizens Mining Project of the Environmental Policy Institute (EPI). EPI is a non-membership public interest organization dedicated to influencing public policy regarding the impacts of energy, water, and agricultural development. In the 1970's, EPI was the national coordinator of a citizens coalition working for the passage of the federal Surface Mining Control and Reclamation Act (SMCRA). After that landmark legislation was passed in 1977, EPI established its Citizens Mining Project to monitor its implementation and enforcement. In addition, the Project works with coalfield residents to better understand and exercise their rights under this law.

I have known Jed Christensen now for almost a year, and have found him to be a breath of fresh air at the Office of Surface Mining (OSM). As this Committee knows, OSM has been embroiled in controversy since its inception. In recent years, it has been the subject of numerous investigatory reports that have found the agency to be sorely failing to carry out its mandatory enforcement responsibilities. In 1985, as a result of this justified criticism, Secretary Hodel informed me that "resolving the OSM problem" was his number two priority at Interior. Soon afterwards, the Secretary installed Mr. Christensen as acting Director at OSM with a mission to get the agency back on track.

When I said that I find Jed a breath of fresh air, I refer to the openess that he has brought to agency. Once again, we in the public arena, feel that we have access to the agency, which is something that was denied to us under former Secretary Watt's tenure.

In addition, Jed brings to the agency a sound government background that has not been tainted from working for any of the surface mining interest parties, such as industry, the states, or the environmental community.

Moreover, for the first time, OSM seems sincerely interested in attempting to negotiate a rulemaking process with all interest parties playing a role prior to OSM drafting the regulations.

EPI supports the confirmation of Jed Christensen based upon the Secretary's committment to us; Jed's open handed manner with the public; his intention to first seek negotiated approach with <u>all</u> parties; and his unbiased career background.

That is not to say that we absolutely approve of the current direction that the agency is taking under the helm of the acting Director. Jed's first year has been marked by some successes as well as continued failures. We remain extremely concerned by the reluctance of OSM to stop the sources of gross mining abuse that continue to plague central appalachia.

For instance, we seem no closer to resolving the 2 acre mining problem in Kentucky than we did one year ago. The computer tracking system which

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the agency is under court order to develop to track violators and deny them, and their controlling agents, new mining permits continues to be in disarray, and seems likely to fail when implemented. Reclamation bonds continue to be so low in the eastern coalfields that they act as an incentive for some operators to leave their mines unreclaimed. OSM has also failed to address thousands of interim program mine sites which have been left unreclaimed, while their operators continue to be granted new mining permits.

Another celebrated failure by OSM has been its obsession with developing a "Management Action Plan" (MAP). While we have strongly supported any efforts to correct the management problems within the agency, in reality MAP has become an instruaent to change many of the agency's mandatory duties under SMCRA. Opposition to MAP has not only come from the environmental community but from major sections of industry as well. Industry understands that if MAP continues in its present draft course it will for certain plunge the agency back into the pool of controversy and conflict. A return to that mode of operation is recognized by the citizens as well as industry to be in no ones interest. Yet MAP continues down this course.

Finally, OSM continues to find many states failing to meet many of their most critical enforcement responsibilities. Year after year, the agency's state program evaluation reports cite repeated failures in the states, yet OSM has shown more and more reluctant to take any action for their correction. Instead, OSM's patented and now famous response to those state breakdowns is that "we are talking with the state". This "talking" usually goes on for years with little if any resolution, while OSM ignores or refuses to utilize other actions which we believe could achieve state correction. OSM appears to be more interested in continuing Secretary Watt's rhetoric of "cooperating with the states" rather than enforcing the law when the states fail to do so. We too are interested in cooperation, but when that route has failed, as it has in several states, stronger action is required. OSM is a regulatory agency, not a technical service bureau to the states. Regulatory agencies must keep an arm's length from those it is charged with regulating.

In sum, we support Jed Christensen as Director based upon our stated reasons. We remain concerned with the direction in which the agency is presently moving under Jed's direction. OSM is rapidly approaching a crossroads where it will either have proven to the public that it can adequately enforce this law, or that it is a terminal failure. We believe that this crossroad will be reached under Jed Christensen's tenure. It is up to him, and his superiors to deal with the ticking clock.

Thank you for the opportunity to testify.

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Public Service Commission
State of North Dakota

COMMISSIONERS
Leo M. Reinbold
President
Dale V. Sandstrom
Bruce Hagen

State Capitol
Bismarck, North Dakota 58505
701 224-2400
800 932-2400
Toll Free in North Dakota
Secretary Janet A. Elsin

February 5, 1986

PLEASE RETURN
FEB 11 1986
WASHINGTON D.C. 20510

The Honorable James McClure
Chairman, Senate Energy Committee
360 Dirksen Office Building
Washington, DC 20510

Dear Senator McClure:

The Public Service Commission is the State Regulatory Authority for North Dakota with respect to regulating the surface coal mining industry and reclaiming abandoned mine sites as required by Public Law 95 87 (The Surface Mine Control and Reclamation Act of 1977). We wish to support the nomination of Jed D. Christensen as Director of the Office of Surface Mining Reclamation and Enforcement.

Three of OSM's most pressing needs are leadership stability, the development of a sound management structure, and implementation of those structural reforms. Our experience with Mr. Christensen over the last several months in his capacity as Acting Director is that he is bringing leadership to the Agency and is currently refining a Management Action Plan which, when implemented, should bring about substantial improvements in OSM's performance and effectiveness.

We hope the Senate will take timely action on Mr. Christensen's nomination.

Sincerely,

Leo M. Reinbold, President

Dale V. Sandstrom, Commissioner

Bruce Hagen, Commissioner

EJE:clw
9913U

cc: Senator Mark Andrews
Senator Quentin Burdick

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Save Our Cumberland Mountains
P.O. Box 457 • Jacksboro, TN 37757 • (615)562-6247

Senate Energy Committee March 4, 1986
Senator Bob McClure, Chairman
SD 358 Senate Office Building
Washington, D.C. 20510

MAR 07 1986

Dear Senator McClure;

Please include the following statement in the record of the confirmation hearings for Jed O. Christensen, who is being considered for Director of the U.S. Office of Surface Mining.

Save Our Cumberland Mountains (SOCM) is a statewide citizens' organization in Tennessee with a membership composed largely of coalfield residents. SOCM has a fourteen year history of working to ensure effective regulation of coal mining in Tennessee and reclamation of mined sites. We are particularly concerned about damage caused by the present lack of an abandoned mine land (AML) reclamation program in our state and Mr. Christensen's unwillingness to consider creative solutions. The U.S. Surface Mining Control and Reclamation Act has only two purposes as stated in the preamble: to regulate present surface mining and to reclaim hazardous mines left from before passage of SMCRA. We feel the second purpose is being ignored in the state of Tennessee.

As a result of legislative revocation of the Tennessee Coal Surface Mining Law in 1984, Tennessee has the dubious distinction of being the only state in the country to have lost primacy under SMCRA. When Tennessee lost primacy, it also lost its 50% share of fees collected from mine operators within our state. As a result, Tennessee no longer has a state AML program.

We fully recognize that state-share funds cannot be made available as long as Tennessee does not hold primacy. However, Tennessee needs an AML program to fulfill Congress' intent to accomplish long-overdue reclamation. We believe that such a program can be established by OSM using Tennessee's share of the Secretary of Interior's AML "discretionary monies". OSM itself has stated that it can conduct projects on the most hazardous sites (priority 1 and 2 sites) with these funds. (49 FR 38878 October 1, 1984).

Yet, despite the fact that the Tennessee share of discretionary money exceeds $4.4 million and despite the fact that state AML program staff had identified, mapped, and evaluated 30 high priority sites prior to OSM's assuming primacy in 1984,

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Mr. Christensen has permitted OSM to begin work on only one emergency project in Tennessee. It is not as though money is not available; we understand that presently nationwide the abandoned mine land trust fund stands at a total of $4C7 million, and is projected to grow to some $450 million in Fiscal Year 1987.

This lack of positive action on Mr. Christensen's part contradicts OSM's previous assurances that it would actively seek funds for Federal AML coal projects classified as Priority 1's and 2's in Tennessee if the State is working to regain primacy. (OSM Statement of AML Policy, January 21, 1984, Attachment 2; availability published in 48 FR 10820, March 15, 1983). Since OSM assumed primacy, a new state law was written and submitted to the Tennessee Legislature, and regulations in support of that law have been prepared. However, political support for a new state bill is not very strong; it is unlikely that it will pass out of both houses in the 1986 session.

Despite repeated entreaties in the form of letters from individual citizens and the TVA Board Chairman, petitions from citizen groups, and personal contact by members of the Tennessee Congressional delegation, Mr. Christensen has refused to make any decision that would alleviate the burden of Tennessee citizens who must live with the dangers of sediment-choked streams, flooding hazards, acid mine drainage, slides, dangerous open portals and air shafts from abandoned deep mines, severe erosion and unstable highwalls, all consequences of unreclaimed and abandoned minelands. Through no fault of their own, individual Tennesseans are being victimized by a bureaucratic turf conflict between state and federal agencies.

The situation appears bleak for the future for AML if Mr. Christensen persists in his present course. The withholding of AML funding has not been sufficient incentive to motivate the Tennessee Governor or Legislature to qualify for primacy in the last seventeen months, and we sincerely doubt if conditions will soon differ.

An AML program under Federal auspices is the only option presently left to the citizens we represent. Ignoring the problem of abandoned minelands in Tennessee will only exacerbate existing damage and increase costs for the agency that eventually assumes responsibility. Surely there are creative solutions that could be generated by the enormous planning and monetary resources at OSM's disposal? Is it too much to ask that the Director of OSM fulfill the intent of the Surface Mining Control and Reclamation Act of 1977? We think not.

Thank you for the opportunity to present our views.

Sincerely,

Annetta P. Watson

Annetta P. Watson, Chair
SOCM Stripmine Committee

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